

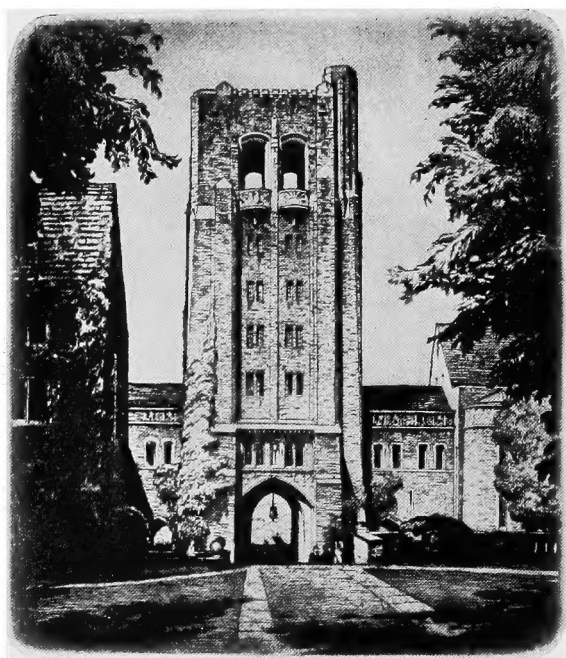


KF

4700

P27

C.1



**Cornell Law School Library**



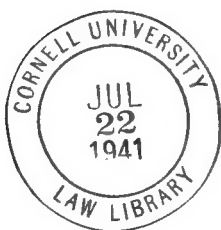
Cornell University Library  
KF 4700.P27

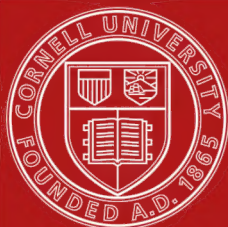
The political, personal, and property ri



3 1924 020 027 888

law





## Cornell University Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.



THE  
POLITICAL, PERSONAL, AND PROPERTY  
RIGHTS

OF A CITIZEN OF THE UNITED STATES.

*HOW TO EXERCISE AND HOW TO PRESERVE THEM.*

TOGETHER WITH

I. A TREATISE ON THE RULES OF ORGANIZATION AND PROCEDURE  
IN DELIBERATIVE ASSEMBLIES;

II. A GLOSSARY OF LAW TERMS IN COMMON USE.

BY

THEOPHILUS PARSONS, LL.D.,

EX-PROFESSOR OF LAW IN HARVARD COLLEGE;

AUTHOR OF "THE LAWS OF BUSINESS," OF A TREATISE ON "THE LAW OF CONTRACTS,  
AND OF OTHER LAW-BOOKS.

HARTFORD:  
S. S. SCRANTON AND COMPANY.

1875.

LA 2131

**Entered according to Act of Congress, in the year 1874, by**

**THEOPHILUS PARSONS,**

**In the Office of the Librarian of Congress, at Washington.**



# CONTENTS.

---

## BOOK FIRST.

### OF THE POLITICAL RIGHTS OF A CITIZEN OF THE UNITED STATES.

---

#### CHAPTER I.

	PAGE
WHAT A CONSTITUTION IS . . . . .	3
Articles in addition to, and amendment of, the Constitution of the United States of America . . . . .	34

#### CHAPTER II.

HISTORY OF THE CONSTITUTION OF THE UNITED STATES . .	5
Sect. I. Events before the War of Independence . . . .	5
II. Events from the beginning of the War of Inde- pendence to the formation of the Constitution .	10
<u>III.</u> The formation of the Constitution . . . . .	16

#### CHAPTER III.

THE CONSTITUTION OF THE UNITED STATES . . . . .	25
---	----

#### CHAPTER IV.

COMMENTS UPON THE CONSTITUTION OF THE UNITED STATES .	38
Sect. I. What our Constitution is . . . . .	38
II. The reconciliation of State rights and national sovereignty . . . . .	44
III. The distribution of power . . . . .	47
IV. The executive power . . . . .	48
The Vice-President . . . . .	50
V. The legislative power . . . . .	51
VI. Of the Senate . . . . .	53
Power as to their own members . . . . .	55
VII. The House of Representatives . . . . .	55

CHAPTER IV.—*Continued.*

Sect. VIII.	Privileges of senators and representatives . . .	56
	Freedom from arrest . . . . .	56
	Not to be questioned elsewhere for speech in either House . . . . .	57
IX.	Power to regulate commerce . . . . .	57
	Commerce with foreign nations . . . . .	57
	Power to regulate commerce among the States	58
	Railroads . . . . .	59
	Can Congress regulate the freights on rail- roads . . . . .	60
	Internal improvements . . . . .	63
X.	Taxes . . . . .	64
XI.	On the judiciary . . . . .	71
XII.	Of impeachment . . . . .	76
	Who may be impeached . . . . .	77
	For what offences an officer may be impeached	78
XIII.	The war power . . . . .	78
	Articles of war . . . . .	79
	Military Academy . . . . .	80
	The Naval Academy . . . . .	80
	Wars of this country . . . . .	81
	The second war . . . . .	81
	The third war . . . . .	82
	The fourth war . . . . .	82
	The fifth war . . . . .	83
XIV.	Power to borrow money . . . . .	83
XV.	Power to coin money . . . . .	85
XVI.	Of naturalization . . . . .	87
	Laws of naturalization . . . . .	88
	Practice . . . . .	90
	Forms annexed to this chapter . . . .	90-94
XVII.	Admission of new States . . . . .	94
XVIII.	A republican form of government guaranteed .	95
XIX.	Of amendments to the Constitution . . . .	96
	Amendments, how made . . . . .	97
XX.	Of the census . . . . .	98
	Tables . . . . .	101-106

## CHAPTER V.

THE CONSTITUTIONS OF THE SEVERAL STATES . . . . .	107
New Hampshire . . . . .	107
Massachusetts . . . . .	108



# CONTENTS.

## CHAPTER V.—Continued.

Rhode Island . . . . .	110
Connecticut . . . . .	111
New York . . . . .	112
New Jersey . . . . .	114
Pennsylvania . . . . .	115
Delaware . . . . .	117
Maryland . . . . .	118
Virginia . . . . .	120
North Carolina . . . . .	122
South Carolina . . . . .	123
Georgia . . . . .	124
Vermont. . . . .	126
Kentucky . . . . .	128
Tennessee . . . . .	130
Ohio . . . . .	131
The North-west Territory . . . . .	131
Louisiana . . . . .	134
Indiana . . . . .	135
Mississippi . . . . .	136
Illinois . . . . .	137
Alabama . . . . .	138
Maine . . . . .	139
Missouri . . . . .	141
Arkansas . . . . .	142
Michigan . . . . .	143
Florida . . . . .	144
Texas . . . . .	146
Iowa . . . . .	148
California . . . . .	148
Wisconsin . . . . .	150
Minnesota . . . . .	151
Oregon . . . . .	152
Kansas . . . . .	153
West Virginia . . . . .	154
Nevada . . . . .	155
Nebraska . . . . .	156
New Mexico . . . . .	156
Utah. . . . .	157
Washington . . . . .	158
Colorado . . . . .	159
Dakota . . . . .	159
Arizona. . . . .	160
Idaho . . . . .	160

CHAPTER V.—*Continued.*

Montana . . . . .	161
Wyoming . . . . .	161
Alaska . . . . .	162
Indian Territory . . . . .	163
District of Columbia . . . . .	163
Table . . . . .	167

## BOOK SECOND.

THE PERSONAL RIGHTS OF A CITIZEN OF THE  
UNITED STATES.

## CHAPTER I.

THE WRIT OF HABEAS CORPUS . . . . .	171
Practice . . . . .	174
Form annexed to this chapter . . . . .	175

## CHAPTER II.

THE RIGHT TO PERSONAL SECURITY . . . . .	176
Sect. I. Trial by jury . . . . .	176
II. No person shall be tried twice for the same offence . . . . .	179
III. Excessive bail . . . . .	180
IV. Excessive fines . . . . .	181
Cruel and unusual punishment . . . . .	181
V. Bill of attainder . . . . .	182
VI. <i>Ex post facto</i> law . . . . .	182
VII. The right to assemble and petition government . . . . .	183
VIII. Impairing the obligation of contracts . . . . .	184

## CHAPTER III.

THE RIGHT TO FREEDOM OF SPEECH AND OF WRITING . . . . .	185
Libel . . . . .	186
Slander . . . . .	186
Truth as a defence . . . . .	187



## CHAPTER IV.

FREEDOM OF RELIGIOUS FAITH AND PROFESSION . . . .	187
---	-----

## CHAPTER V.

MILITARY RIGHTS AND DUTIES . . . . .	188
--------------------------------------	-----

## CHAPTER VI.

THE RIGHT AND DUTY OF SUFFRAGE . . . . .	189
The right of suffrage . . . . .	190

## CHAPTER VII.

THE RIGHTS AND DUTIES GROWING OUT OF THE DOMESTIC RELATIONS . . . . .	201
Sect. I. Parent and child . . . . .	201
Infants or minors . . . . .	202
Guardian and ward . . . . .	205
Apprentices . . . . .	207
Forms annexed to this section . . . . .	205, 208-210
II. Husband and wife . . . . .	210
Alabama . . . . .	212
Arkansas . . . . .	212
California . . . . .	212
Connecticut . . . . .	214
Delaware . . . . .	215
Florida . . . . .	215
Georgia . . . . .	215
Illinois . . . . .	216
Indiana . . . . .	217
Iowa . . . . .	218
Kansas . . . . .	219
Kentucky . . . . .	219
Louisiana . . . . .	220
Maine . . . . .	221
Maryland . . . . .	222
Massachusetts . . . . .	223
Michigan . . . . .	224
Minnesota . . . . .	225
Mississippi . . . . .	225
Missouri . . . . .	226
Nebraska . . . . .	226
Nevada . . . . .	226

CHAPTER VII. — *Continued.*

New Hampshire . . . . .	227
New Jersey . . . . .	227
New York . . . . .	228
North Carolina . . . . .	229
Ohio . . . . .	229
Oregon . . . . .	230
Pennsylvania . . . . .	230
Rhode Island . . . . .	231
South Carolina . . . . .	231
Tennessee . . . . .	232
Texas . . . . .	232
Vermont . . . . .	233
Virginia . . . . .	233
West Virginia . . . . .	234
Wisconsin . . . . .	234
Marriage . . . . .	235
Divorce . . . . .	245
Forms annexed to this section . . . . .	237-245

## BOOK THIRD.

THE PROPERTY-RIGHTS OF A CITIZEN OF THE  
UNITED STATES.

## CHAPTER I.

EMINENT DOMAIN . . . . .	251
--------------------------	-----

## CHAPTER II.

THE ACQUISITION OF PROPERTY . . . . .	252
---------------------------------------	-----

## CHAPTER III.

THE DISTRIBUTION OF THE PROPERTY OF AN INTESTATE . . . . .	253
The distribution of personal estate . . . . .	254

## CHAPTER IV.

OF THE DISPOSAL OF PROPERTY BY WILL . . . . .	255
Sect. I. Of wills . . . . .	255
II. Codicils . . . . .	258

CHAPTER IV.—*Continued.*

Sect. III. Revocation of wills . . . . .	258
Forms annexed to this section . . . . .	259–265
IV. Executors and administrators . . . . .	265
Forms annexed to this section . . . . .	268–273

## CHAPTER V.

DEEDS OF LAND . . . . .	273
Sect. I. What is essential to deeds conveying land . . . . .	273
II. The usual clauses in deeds . . . . .	278
III. Mortgages of land . . . . .	284
Forms annexed to this chapter . . . . .	289–354

## CHAPTER VI.

PURCHASE AND SALE OF GOODS AND CHATTELS . . . . .	355
Sect. I. What constitutes a sale . . . . .	355
II. Delivery and its incidents . . . . .	359
III. Contracts void for illegality or fraud . . . . .	363
IV. Sales with warranty . . . . .	365
Forms annexed to this section . . . . .	367–369
V. The sale of one's business . . . . .	369
VI. Stoppage <i>in transitu</i> . . . . .	370

## CHAPTER VII.

MORTGAGES OF GOODS AND CHATTELS . . . . .	372
The pledge of personal property . . . . .	373
Forms annexed to this chapter . . . . .	374–378

## CHAPTER VIII.

LETTING AND HIRING OF REAL PROPERTY . . . . .	379
Leases . . . . .	379
Fixtures . . . . .	382
Forms annexed to this chapter . . . . .	383–411

## CHAPTER IX.

GIFTS . . . . .	411
-----------------	-----

## CHAPTER X.

FINDING . . . . .	413
-------------------	-----

# CHAPTER XI.

CONSIDERATION . . . . .	414
Sect. I. The need of a consideration . . . . .	414
II. What is a sufficient consideration . . . . .	415
III. An illegal consideration . . . . .	417
IV. An impossible consideration . . . . .	417
V. Failure of consideration . . . . .	418

# CHAPTER XII.

AGREEMENTS . . . . .	420
Sect. I. The legal meaning of agreement . . . . .	420
Mistakes . . . . .	421
Fraud . . . . .	421
II. What is an assent . . . . .	422
III. Offers made on time . . . . .	422
IV. A bargain by correspondence . . . . .	423
V. What evidence may be received in reference to a written contract . . . . .	424
VI. Custom or usage . . . . .	426
How contracts or agreements should be made . . . . .	428
Forms annexed to this chapter . . . . .	429-443

# CHAPTER XIII.

ASSIGNMENTS . . . . .	445
Forms annexed to this chapter . . . . .	445-448

# CHAPTER XIV.

BONDS . . . . .	449
Forms annexed to this chapter . . . . .	450-456

# CHAPTER XV.

GUARANTY . . . . .	457
Sect. I. Of the rights and duties of a guarantor . . . . .	457
Forms annexed to this chapter . . . . .	460-462
II. The Statute of Frauds . . . . .	462
A promise to pay the debt of another . . . . .	463
An agreement not to be performed within a year . . . . .	464
The form and subject-matter of the agreement . . . . .	465

# CHAPTER XVI.

PAYMENT AND TENDER . . . . .	466
Sect. I. How payment may be made . . . . .	466
II. Appropriation of payment . . . . .	467



CHAPTER XVII.

RECEIPTS AND RELEASES . . . . .	468
Forms annexed to this chapter . . . . .	469-480

CHAPTER XVIII.

NOTES OF HAND AND BILLS OF EXCHANGE, DRAFTS, AND	
CHECKS . . . . .	481
Sect. I. The purpose of, and the parties to, such papers . . . . .	481
Forms annexed to this section . . . . .	482
II. What is essential to a negotiable note or bill . . . . .	484
Form annexed to this section . . . . .	485
III. The consideration of negotiable paper . . . . .	491
IV. The rights and duties of the maker . . . . .	493
V. The rights and duties of the holder of negotia-	
ble paper . . . . .	494
VI. The rights and duties of the indorser . . . . .	504
VII. The rights and duties of the acceptor . . . . .	507
VIII. Acceptance or payment for honor . . . . .	508
Forms annexed to this section . . . . .	509-512

CHAPTER XIX.

AGENCY . . . . .	512
Sect. I. Agency in general . . . . .	512
II. How authority may be given to an agent . . . . .	514
III. Extent and duration of authority . . . . .	516
IV. The execution of authority . . . . .	518
V. Liability of an agent . . . . .	519
VI. Rights of action growing out of agency . . . . .	519
VII. How a principal is affected by the acts of his agent . . . . .	520
VIII. Mutual rights and duties of principal and agent . . . . .	521
IX. Factors and brokers . . . . .	523
Forms annexed to this chapter . . . . .	526-531

CHAPTER XX.

PARTNERSHIP . . . . .	532
Sect. I. What a partnership is . . . . .	532
II. How a partnership may be formed . . . . .	532
III. How a partnership may be dissolved . . . . .	534
IV. The property of the partnership . . . . .	536
V. The authority of each partner, and the joint	
liability of the partnership . . . . .	537
VI. Remedies of partners against each other . . . . .	540

CHAPTER XX. — *Continued.*

Sect. VII.	Rights of the firm against third parties . . .	542
VIII.	Rights of creditors in respect to funds . . .	542
IX.	The effects of dissolution . . . . .	544
X.	Limited partnership . . . . .	545
	Forms annexed to this chapter . . . . .	546-550

## CHAPTER XXI.

ARBITRATION . . . . .	551
Sect. I. Of the submission and award . . . . .	551
II. The revocation of a submission to arbitrators . . .	554
	Forms annexed to this chapter . . . . . 556, 557

## CHAPTER XXII.

THE CARRIAGE OF GOODS AND PASSENGERS . . . . .	558
Sect. I. A private carrier . . . . .	558
II. The common carrier . . . . .	559
III. Bills of lading . . . . .	561
IV. The obligation of the common carrier to receive and carry goods or passengers . . . . .	562
V. The lien of the common carrier . . . . .	566
VI. The liability of the common carrier . . . . .	567
VII. The carrier of passengers . . . . .	568
VIII. A notice by the carrier respecting his liability .	569
IX. The carrier's liability for goods carried by pas- sengers . . . . .	570
	Forms annexed to this chapter . . . . . 573-575

## CHAPTER XXIII.

FIRE INSURANCE . . . . .	576
Sect. I. The usual subject and form of this insurance . .	576
	Usage . . . . . 577
II. The construction of policies against fire . . .	578
	Applications . . . . . 580
III. The interest of the insured . . . . .	584
IV. Double insurance . . . . .	586
V. Warranty and representation . . . . .	587
VI. The risk incurred by the insurers . . . . .	589
VII. Valuation . . . . .	590
VIII. Alienation . . . . .	591
IX. Notice and proof . . . . .	592
X. Adjustment and loss . . . . .	593
	Forms annexed to this chapter . . . . . 594-596

## CHAPTER XXIV.

<b>LIFE INSURANCE</b> . . . . .	597
Sect. I. The purpose and method of life insurance . . .	597
II. The premium . . . . .	598
III. The restrictions and exceptions in life policies . .	599
IV. The interest of the insured . . . . .	600
V. The assignment of a life policy . . . . .	601
VI. Warranty, representation, and concealment . . .	602
VII. Insurance against accident, disease, and dishonesty of servants . . . . .	605

## CHAPTER XXV.

<b>BANKRUPTCY</b> . . . . .	605
Voluntary bankruptcy.— Commencement of proceedings .	606
Assignments and assignees . . . . .	608
The distribution of the bankrupt's estate . . . . .	613
The bankrupt's discharge and its effect . . . . .	615
Preferences and fraudulent conveyances declared void .	618
Involuntary bankruptcy . . . . .	619
Of superseding the bankrupt proceedings by arrangement .	621
Composition with creditors . . . . .	623

## CHAPTER XXVI.

<b>LIMITATIONS</b> . . . . .	625
Sect. I. The Statute of Limitations . . . . .	625
II. Construction of the statute . . . . .	626
III. The new promise . . . . .	627
IV. Part-payment . . . . .	628
V. Some statutory exceptions . . . . .	628
VI. When the period of limitation begins . . . . .	629
VII. The statute does not affect collateral security . .	630

## CHAPTER XXVII.

<b>INTEREST AND USURY</b> . . . . .	630
Sect. I. What interest is, and when it is due . . . . .	630
II. A charge for risk or for service . . . . .	634
III. The sale of notes . . . . .	635
IV. Compound interest . . . . .	637
Abstracts of the usury laws of the States . . .	637

## CHAPTER XXVIII.

THE LAW OF PLACE . . . . .	640
Sect. I. What is meant by the law of place . . . . .	640
II. The general principles of the law of place . . . .	641
III. The place of the contract . . . . .	642
IV. Domicile . . . . .	643

## CHAPTER XXIX.

TRADE-MARKS . . . . .	645
-----------------------	-----

## CHAPTER XXX.

MEANS PROVIDED FOR THE RECOVERY AND COLLECTION OF DEBTS . . . . .	648
--	-----

## CHAPTER XXXI.

THE LIENS OF MECHANICS AND MATERIAL-MEN FOR THEIR WAGES AND MATERIALS . . . . .	649
Forms annexed to this chapter . . . . .	651-658



RULES FOR ORGANIZATION AND PROCEDURE IN DELIB-  
ERATIVE ASSEMBLIES.



## CHAPTER I.

ORIGIN AND PURPOSE OF THE RULES OF ORDER . . . . .	657
--	-----

## CHAPTER II.

ORGANIZATION . . . . .	658
------------------------	-----

## CHAPTER III.

QUORUM . . . . .	659
------------------	-----

## CHAPTER IV.

HOW QUESTIONS ARE DECIDED . . . . .	659
Of the officers . . . . .	659

CHAPTER V.

HOW BUSINESS MAY BE INTRODUCED . . . . .	660
--	-----

CHAPTER VI.

OF MOTIONS . . . . .	661
----------------------	-----

CHAPTER VII.

RESOLUTIONS AND ORDERS . . . . .	661
Seconding . . . . .	661
Withdrawing a motion . . . . .	662

CHAPTER VIII.

THE ORDER OF MOTIONS . . . . .	662
--------------------------------	-----

CHAPTER IX.

MOTION TO ADJOURN . . . . .	662
-----------------------------	-----

CHAPTER X.

TO LIE ON THE TABLE . . . . .	663
-------------------------------	-----

CHAPTER XI.

THE PREVIOUS QUESTION . . . . .	663
---------------------------------	-----

CHAPTER XII.

POSTPONEMENT TO A DAY CERTAIN . . . . .	664
---	-----

CHAPTER XIII.

TO COMMIT . . . . .	664
---------------------	-----

CHAPTER XIV.

MOTION TO AMEND . . . . .	665
---------------------------	-----

CHAPTER XV.

HOW COMMITTEES ARE APPOINTED . . . . .	667
How the committee meet and act . . . . .	668
Minority reports . . . . .	668

CHAPTER XVI.

COMMITTEE OF THE WHOLE . . . . .	668
----------------------------------	-----

## CHAPTER XVII.

PRIVILEGED QUESTIONS . . . . .	669
--------------------------------	-----

## CHAPTER XVIII.

ORDERS OF THE DAY . . . . .	670
-----------------------------	-----

## CHAPTER XIX.

HOW THE PRESIDING OFFICER PUTS QUESTIONS . . . . .	670
How the vote may be ascertained . . . . .	671
Taking the question by yeas and nays . . . . .	671

## CHAPTER XX.

HOW A MOTION IS MADE . . . . .	672
Rules and usages of debate . . . . .	672

## CHAPTER XXI.

APPEALS FROM A PRESIDING OFFICER . . . . .	673
--	-----

## CHAPTER XXII.

RECONSIDERATION . . . . .	673
---------------------------	-----

## CHAPTER XXIII.

OF A BILL . . . . .	674
---------------------	-----

## CHAPTER XXIV.

THE PRESERVATION OF ORDER . . . . .	675
-------------------------------------	-----

GLOSSARY OF LAW TERMS IN COMMON USE . . . . .	677
INDEX . . . . .	699

**BOOK FIRST.**

**THE POLITICAL RIGHTS OF A CITIZEN OF THE  
UNITED STATES.**



## NOTE.

I HAVE believed that a book exhibiting the provisions and the principles of our national constitution, with the history of its formation, and the means by which republican institutions may be made most productive of good, and guarded from the dangers which most nearly threaten them, would be useful; and I have attempted to do this in the First Book in this volume.

The Second Book contains a view of the personal rights so secured to all our citizens by our constitutions and laws, that only our neglect or abuse of them can impair or imperil them.

The Third Book states in simple and untechnical language the laws and rules, by an observance of which all the kinds of business in common use may be safely transacted.

Then follows a Treatise on the Rules of Order in Deliberative Bodies. A knowledge of these rules is especially necessary in this country, where nearly all its public business, — from Congress down to our town meetings, — and much of its private business, — as in meetings of stockholders and the like, — are governed by these rules; and all such meetings would avoid disorder, and accomplish their purposes far better, if these rules were generally known and regarded.

The volume closes with a Glossary, or Dictionary, of Law Terms in common use. The language of the law, to a large extent, may be easily taught; and as without it the rules under which we all live and act cannot be well understood, it would seem that it might be usefully learned.

All that part of this volume which is taken from my former works has been carefully revised and amended.

THEOPHILUS PARSONS.

CAMBRIDGE, 1874.

# BOOK FIRST.

## OF THE POLITICAL RIGHTS OF A CITIZEN OF THE UNITED STATES.

---

### CHAPTER I.

#### WHAT A CONSTITUTION IS.

The political rights of a citizen of the United States are defined, established, and protected by the Constitution of the United States, and the constitutions of the several States. Our first endeavor will be to ascertain what this word "constitution," when used in a political sense, means.

A constitution is that supreme law, which the nation itself makes, as the condition and the limitation of all the powers it will thereafter impart to its political servants. It is the guide which it gives to them all. It is the expression of the deliberate determination of the whole people, that the rights which it believes to lie at the foundation of all right, shall ever be preserved; that certain principles, which are to be as the life and essence of all law, shall ever be maintained; and it divides and defines, and yet connects together, all the organic powers and functions of the State. It governs all legislative bodies in the exercise of their functions, for it is the law of the law of the nation. And when the constitution is thus formed, it is thereafter the supreme law of every citizen of the State, be he high or low, be it his office to make, to execute, or to judge of law, or only to assist in laying these duties upon others. To every man, and to every man alike, it is a supreme law.

The imperfect imitations of a constitution on the continent of Europe, and on this continent south of the Union, were never the expression or the creation of the deliberate reason and will of the people; they never were what constitutions should be, and nearly all of them have been torn into tatters.

We often read of the British Constitution. But Great Britain has no constitution. Let us suppose that, at the next session of the British Parliament, a rigorous censorship of the press is established, the Queen authorized to lay what taxes she will, on whom she will, and collect them as she will, the Habeas Corpus Act repealed, and all the ministers supplied with blank warrants under the privy seal, as it once was in France, which they may fill with any name, and by these means imprison any persons at their pleasure. And let us suppose that these laws pass through Parliament with precisely the same forms as those necessary for a statute to regulate the days of grace on bills of exchange, or to provide any other common mercantile or municipal measure. It is certain that no man in England would have a legal right to resist any one of these laws; and no court or magistrate in England would have a legal right to obstruct, or defeat, or annul them, or do any other thing than carry them at once into full force and effect. Of course, if the popular sentiment were not greatly changed, there would be opposition and effectual resistance somewhere. But it would be the opposition of rebellion or revolution, and not of legal right. But let any such law be passed by Congress and the President of the United States, or by the legislature and governor of any State, and it is only *nothing*. It is dead at its birth. The judicial body of the nation or the State is ready to declare it to be nothing. And the reason for all this is, that the law opposes the constitution, and, by the force of that fact, is nothing. If, in England, the word "constitution" may mean the whole complex of all their political and legal institutions, here it means something distinct from them all, something sovereign over them all, imparting life to all of them that live, and denying life and power to whatever opposes it.

The government of these United States is this day the strongest government in the world, for it is the organ of a nation endowed with self-government, and is invested with the nation's might, to be used for the nation's good, in whatever way may prove to be the best. It is the government of law, and its strength is in the Constitution. We are a nation that includes as wide a diversity of opinion, of sentiment, of character, and of interest, as of soil and climate. But over us all the Constitution bends like the universal sky, holding us all within its embrace, but lifted up too high for any one to reach it with a sacrilegious hand. Like the sky, it comes down as the beneficent air, which surrounds us at every step and at every moment, supplying us with the element of political life, and yet so soft, so yielding and invisible, that we do not think of it as we engage in the work or enjoy the happiness of every day. Soft, yielding, and invisible is this sweet air we breathe and live upon;

and yet it may, when there is need, put forth its strength, — and who can stand against the might of the unfettered wind!

The strength of our constitutional government must reside in its gentleness, and in the opportunity which is given by its gentleness, for passion to calm down, and stubbornness to melt away, and the wanderer to return, and that which is right and best to become manifest to all men. It must reside in its patient forbearance while that is possible, and in its cautious mildness as far as that is possible; in its power, derived from this very gentleness, of adaptedness to every exigency; and, therefore, of adequacy to any exigency which may call upon it, either to bring into action its whole irresistible might, or to take any other course which a comprehensive and clear-sighted wisdom may approve.

Nor is our constitution a fetter imposed by the past upon the present and the future, fixed and crystallized into forms which may be broken but cannot change. The exact opposite of this is the truth. It is a living organism. It invites and provides for change. It desires all changes, in all time, which shall make it ever more able to perform its great functions. But it carefully provides that these changes shall come only as a common demand, shall be matured by a common deliberation, and rest on a common consent; common, not universal, for that it is too wise to require or to expect.

---

## CHAPTER II.

# HISTORY OF THE CONSTITUTION OF THE UNITED STATES.

## SECTION I.

### EVENTS BEFORE THE WAR OF INDEPENDENCE.

We might trace back to the very beginning of history, the series of events which led to the formation of our constitution. We can only glance at this series now. Let us begin with the inquiry, what the best government must be; and the answer should be, in one word, self-government. On this topic, as on so many others, we may be helped by remembering that as a nation is composed of men, it cannot contain any other elements of national character than those which are contributed by the men of the nation. And when we look at men individually, and from the study of human character

reach certain definite laws and conclusions concerning human life in the individual, we may well hope that these laws and conclusions will throw some light upon similar questions as they exist in reference to a nation.

The best definition or description of a republican constitutional government may be found in the often-quoted words of President Lincoln. It is a government "of the people, by the people, for the people." But these words are often used with an ignorance or disregard of their exact and most important meaning; for they are used as if government "of" the people and government "by" the people meant the same thing. There can be no greater mistake. Government *of* the people means that the people shall be governed; as really and effectually governed as under any form of government. But never oppressively or tyrannically, because they are governed *by* themselves. They govern themselves, for and in their own best interests. And if they are not governed, if they do not govern themselves, those interests are disregarded and defeated. For what is the best government for an individual? If I put the question in another shape, — if I ask whether he is best governed who is surrendered to his own fantasies and proclivities and lusts, and exasperates all these by utter unrestraint, and makes no reference to right or wrong; or the law of God or the law of man, the question answers itself. I am describing a man who has done all that he can do to become only a wild beast. Better were it for him that some arm of power should hold him, some fear restrain him, some irresistible command control him, and all these influences compel him to decent conduct. Then, it might at least be possible that his lusts and follies, because they were repressed, would be enfeebled. If so, it might again be possible that the severity of external control could be safely relaxed; that some acknowledgment of law, some thought of right, would begin to exert a power within him, and thereby facilitate the entrance of yet better thoughts and higher motives, and that this advancing and ascending progress might go on, until a control from within accepted and welcomed a control from without as a necessary help. And the consummation of all this would come when the law of truth, of right, and of instructed conscience was all the law he needed, all the law he felt; and this law put him at ease with the system of law prevailing all around him, and the man stood and lived in perfect peace with the law and perfect peace with himself.

This is but an ideal picture; far from the reality existing in the best of us. It is, however, a picture of that last result towards which we are led by all moral improvement, all elevation of motive, all recognition of the authority of right, and all confirmation of our love of goodness.

I cannot but think that the history of the past and the condition of the present lead to the conclusion that a law and method of progress, somewhat analogous at least, prevail in the growth of nations. History is but the biography of man; and the lessons which are taught by the life of mankind cannot be altogether remote and diverse from those we may gather from the lives of men.

To see how the progress of mankind has accorded with these principles, we must go far back towards the beginning; and it is of course impossible to give more than the most cursory glance at the evidence which the pages of history offer. But even this glance will show us that while government was known only as unmitigated despotism in the Eastern and ancient world, it received important modifications as it passed through Greece; and that the despotism of the central power of the vast empire of Rome was accompanied with a singular amount of freedom and self-government in the cities and boroughs and lesser provinces into which the Roman empire was divided. In this way some preparation was made for the feudal system, which was, in theory, a government of laws and not of men, for it assigned his own place and his own rights to every man. And so the possibility of deliverance from a wholly external control, from a power which was over him and against him, instead of one which was accepted by him as his own and as self-imposed, grew from age to age.

A few centuries ago, four great discoveries, or rather the bringing within reach and use of four things known but neglected before, came near together and distinguished that period from any other in history. One of these was the mariner's compass; and it guided Columbus to America. The discovery of this continent was another. Gunpowder, the third, made the subjection of this continent easy and rapid. And the press, which was the fourth discovery, diffused among expecting nations the tidings of this new world, and spread widely a knowledge of the advantages which it offered; and this soon brought to our shores the beginning of a new population. This grew up under the fostering and needed care of the parent races, until the colony was strong enough to become a State.

Something like this had often happened before. History is full of stories of successful colonization, and of young nations which cast off dependence when they were strong enough to break their fetters. But something else happened now that never occurred before. In all previous instances where colonies grew into States, they became substantially what their parents were. When the new shoot was rooted, it was the old tree again, with more or less unimportant change from soil or climate or position. Not so here. Our colonial fathers were at first subjects of a king, as all the in-

habitants of earth, with few and slight exceptions, under some form or name, were and always had been. But when our fathers ceased to be subjects of their king, they founded States without a king; and in this simple fact they indicated, and the wiser among them saw, the dawn of a new day in the life of mankind.

**This new world, thus and then discovered, was near enough to the old world to receive colonists with no more hinderance and difficulty than were useful to sift out the weak from the strong, that the seed of a new nation might have due vitality. Far enough from the old world to prevent an immediate and controlling influence from stretching across the waters and causing the future to be but a repetition of the past; far enough to permit the germs of nations planted here to grow up into the great possibility which awaited them. And then the hour came, and the last word of God's providence in human government was uttered when he said to a great nation, "Go forth, be free, and GOVERN YOURSELVES."**

**The great question for this country is, shall we be deaf to this word? In the infinite future there may be and will be vast changes and infinite improvements. These will lessen, or remedy, or prevent many evils which we already discern, and many more which we do not yet discern, in our republican institutions; and whatever good has yet come, or may now be hoped for from these institutions, will be increased a thousand fold, as they are changed for the better. But the nations will never again regard as the only possible or desirable government, that of a power distinct from the people, and deriving no force and no life from their consent and voluntary recognition. The work we have begun will not be suppressed and extinguished. It will live, and it will grow into the fulness of its stature; and that it may live and grow, the wants, the deficiencies, and the errors of any age will be disclosed by whatever lessons may be necessary to teach them, and will be remedied by whatever means are then found best for that purpose. For the period in the progress of mankind has been reached when a government was to be formed, which should possess, and in time of need be able to exert, the force of the nation for national purposes, and the combined power of its component parts for all those purposes which embrace the interests of all, and yet leave each of those parts, States, cities, families, and individuals, in the utmost possible freedom to enjoy the blessing and discharge the duty of self-government. When before, where else, has this ever been the design of government?**

**The colonies, from their beginning, exercised a large amount — some more and some less — of self-government. They knew that this must be so, and in some cases provided for it. A noticeable instance of this occurred among the founders of the colony of Ply-**

mouth in New England. The "Mayflower" dropped her anchor in the roadstead of what is now Provincetown, on Cape Cod, Nov. 11, 1620. A journal of their proceedings says:—

"This day, before we came to harbor, observing some not well affected to unity and concord, but gave some appearance of faction, it was thought good there should be an association and agreement, that we should combine together in one body, and to submit to such government and governors as we should by common consent agree to make and choose, and set our hands to this that follows, word for word." The following instrument was prepared and signed:—

"In the name of God, amen. We, whose names are underwritten, the loyal subjects of our dread sovereign lord, King James, by the grace of God, of Great Britain, France, and Ireland King, Defender of the Faith, &c., having undertaken, for the glory of God, and advancement of the Christian faith, and honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia, do by these presents, solemnly and mutually, in the presence of God and one of another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience. In witness whereof we have hereunder subscribed our names, at Cape Cod, the 11th of November, in the year of the reign of our sovereign lord, King James, of England, France, and Ireland the eighteenth, and of Scotland the fifty-fourth, Anno Domini 1620."

This may be called the first written constitution; forced, as it were, upon our fathers, by the compulsion of circumstances. It contains the essential principles of all republican constitutions. In all the colonies, through all their history, there was some conflict, and in some of the colonies an almost constant conflict, between their efforts at self-government and the royal authority, which, in the hands of its agents and officials, sought to control them. They became little republics; or it is more accurate to say that, by the experiences and the discipline they passed through for more than a century, they were trained to become republics.



## SECTION II

**EVENTS FROM THE BEGINNING OF THE WAR OF INDEPENDENCE TO THE FORMATION OF THE CONSTITUTION.**

The colonies of North America were formed in rapid succession, and were scattered all along our seaboard. They were formed, to some extent, by different kinds of people, who came not all from one country nor moved by the same impulse, and they brought with them different characteristics. They were planted at distances which permitted them, independently, or, at least, without much assimilating influence of one upon another, to grow up each in its own way, each under its own circumstances, and each to develop its own peculiarities. And yet they were near enough, and similar enough, to seek and to have much intercourse, and to render to each other much assistance. As time passed on, they found it desirable, in some instances to unite and coalesce under a common government; and in others, to form alliances for mutual assistance and protection. And in this way some unity of feeling and of interest, and some tendency to community of action, grew up. And these experiences undoubtedly facilitated, and perhaps I might say made possible, their united action in their efforts to obtain independence.

As the feeling that independence must be won, and would be worth all that it might cost, grew stronger and more general, it became evident to the far-sighted and the patriotic that there must be some concert of action. In June, 1765, James Otis, of Boston, advised the calling of an American congress. But this measure met with much opposition, and for a time it seemed as if there could be no union. Then South Carolina responded to Massachusetts, and declared for union! In New York, those who held similar views established a newspaper, called the "Constitutional Courant," which had much influence. It bore for its motto the words, first used by Franklin nearly ten years before, "Join or Die." Never was the guiding truth of a great emergency expressed more emphatically or in fewer words. Join or die. This was indeed the great truth of that day, of every day since then, and of the very hour in which we live. Other States acceded, and on the 7th of October, 1765, the first congress, consisting of delegates regularly appointed from six States, with others, representing three more, assembled at New York. The doings of this congress strengthened and diffused the desire for united action. As the necessity became greater and more apparent, at length what is called the Continental

Congress assembled in Philadelphia on the 5th of September, 1774, and then on the 10th of May, 1775. Still, so great was the jealousy of a central power, that nothing but the peril of impending war, and its pressure when it came, held even this congress of delegates together. But they did hold together; and it was this congress which, on the 15th of June, 1775, appointed Washington commander-in-chief of the continental army; and on the 4th day of July, 1776, declared our independence.

In that declaration these two elements of the unity of the whole and the sovereignty of the parts were mingled. It begins, "When it becomes necessary for ONE PEOPLE to dissolve the political bonds which have connected them with another," and at its close declares that the former colonies are "free and independent States." There they stood, free from all external dominion, and as independent of each other as of England.

But in 1777, Washington, when, at Morristown in New Jersey, he found himself in the midst, if not of treason, of an indifference which was hardening into treason, by proclamation required all who had received protections from the British commander to surrender them and take an oath of allegiance to the United States! United; when and how were they united? In Congress he was censured for this. In the legislature of New Jersey it was declared that the required oath encroached upon the prerogatives of the State, and that it was absurd to swear allegiance to the United States before even a confederacy was formed. But even then Washington was justified by the language of the Declaration of Independence: even then were these States united in the contemplation of the good and the wise, and most of all in the heart of him who was best among the good and wisest among the wise.

The doings of the Continental Congress before the Declaration of Independence, and in making that declaration, were revolutionary. They acted from necessity; and the general sense of this necessity prevented criticism of their measures or a refusal to obey them. But the Congress itself felt the need of a more orderly organization, which should approach a nationality, so far, at least, as to unite the States into a strong and efficient confederacy.

On the same day in which a committee was appointed to prepare a declaration of independence, 11th of June, 1776, it was resolved to appoint another committee "to prepare and digest the form of a confederation to be entered into between these colonies." This committee reported a draft of articles of confederation, which was debated for about a month, and then a new draft was reported by the Congress in committee of the whole. The matter then slept until April, 1777, when it was taken up and debated on sundry days

for about seven months, and on the 15th of November was adopted. These particulars are stated, that it may be seen how slowly and with what difficulty the idea of nationality made its way among the people. At that time it had indeed scarcely an existence. The different colonies had always been jealous of each other. Their interests were distinct, and in some respects opposed. Only because no one colony, and no part of the colonies, could achieve their independence, and all desired their independence, could they be induced to combine together sufficiently to act with any concert in the war of the Revolution. The wisest and strongest men in the country—Washington and Franklin may be mentioned—looked further. We cannot say that either of these men or any of their great compatriots anticipated the wonderful future which awaited their country, and which would have been impossible if that country had not become a nation. It is, however, certain that they did earnestly desire an actual and effectual confederation, which should confer upon the general government adequate powers. The nearest approach they could make to this, and that with great difficulty, was in forming the Articles of Confederation. It was no easy matter to carry these articles through the Congress, obvious as must have been the need of them to every member of that body. And after they had been adopted by Congress, there was great difficulty in obtaining the ratification of them by the colonies, which by the declaration of independence had become States. At length, however, in the last half of 1778, about one year from the adoption of this instrument by the Congress, it was ratified by all the States but two; and these, Delaware in 1779, and Maryland in 1781, finally ratified it. It was then publicly declared by Congress, with rejoicings which proved, on the one hand, with how much difficulty it had been obtained, and on the other, how much was hoped from it, and how great a good it was thought to be.

The main cause of this difficulty was in the absence of all willingness among the people of the different States to give up so much of the independence and sovereignty of each State as was necessary, that all together might constitute a nation. There were, however, other causes. One of these was a great difference of opinion as to the basis of voting in the Congress. Some wished this to be by States, the smaller having equal power with the larger. Others would have political power proportioned to wealth; and still others to population. There was also much conflict, both of opinion and of interest, as to the ownership of the vacant lands in the vast and then unexplored western territory. The charters of the colonies were exceedingly indefinite as to their western boundaries, some of them running to "The South Sea," as the Pacific Ocean was then

called. The larger States claimed that all the land within their chartered boundaries should belong to them. The smaller States insisted that the western regions, so far as they were unoccupied, should belong as a common property to the whole country. After much exciting controversy, which more than once threatened the existence of the confederacy, this question was settled by a concession to the confederacy, by the larger States, of a great part of the unsettled territory claimed by them.

**These obstacles not only obstructed and delayed the formation of a confederacy, until they were overcome by the absolute necessity of union and co-operation in resisting the efforts of Great Britain to preserve her sovereignty, but they made the Articles of Confederation a most imperfect instrument.** While the war lasted, it sufficed tolerably well for its purpose; and one reason for this was that Congress took whatever measures seemed necessary, without any careful observance of the limits imposed by the articles; and the people seeing the necessity made no opposition. But when peace came, it may be said that the Articles of Confederation broke down. The reason was, that the general jealousy of a central government had withheld from it powers absolutely necessary to its existence. It had, indeed, no power of self-protection, no power of compulsion, no power of carrying into effect its own resolves. They could raise no money, and no army. They could appoint ambassadors, but could pay them nothing. They could conclude treaties, but only advise the execution of them. It was but the semblance of a government, with little of its substance.

**For all this, the Articles of Confederation must be regarded as the nearest approach to a national government that the temper of the people at that time made possible.** They were a step in that direction, and an important step; but it was only one step towards that result.

**The Articles of Confederation did not even purport to make of us a nation.** If they are studied, they will prove the earnest desire of some at least of those who drew them, that we might become a nation. But they stopped so far short of this as to form of the States only a confederacy. These articles were skilfully drawn, and gave to the central government all the power which the States could then be induced to part with. Some semblance—something indeed of the substance of national power—was given; although there was no regular legislative, executive, or judicial department. Probably all the power was given to Congress that it was thought necessary that it should possess to do the work that lay before it. This work it did, well and thoroughly; for while the thirteen States were held together by the presence of a common enemy, a common

war, and a common necessity, the Articles of Confederation sufficed to make that war triumphant; but they sufficed for this, because the sagacity and singleness of purpose of the men who wielded the powers of government, the patriotism of the people, and the wisdom and constancy of Washington, supplied — so far at least as was needed for success — all deficiencies.

Then came peace, and it was soon apparent that the want of unity in the nation, and of power in the government and its organs, not only prevented the deep wounds of the war from healing, but seemed even to aggravate all the mischiefs which followed, and made the first years of peace no years of returning prosperity. The central government, no longer sustained and invigorated by the war, found itself utterly unable to prevent or to avenge insults and outrages to our flag; it could not even repel the incursion of the savages on our borders; it could not pay the interest of our national debt; it had no credit, no force, no vital energy, and it may well be said to have died of inherent weakness; for in 1787 it abrogated its own functions, declared its inability to act as the government of a nation, and it appealed to the ultimate source of all political power, — the people of the whole country. And then came the convention of 1787. When it met, there was in that assembly as much of sagacity, of varied intellectual accomplishment and resource, and of earnest devotion to duty, as ever co-operated in a great work. And with all these mingled as little of folly and weakness, as little personal ambition, as little self-seeking of any kind, and as little of the disturbing force which these ignoble qualities would exert, as was possible under the conditions of humanity.

If, in saying that the old Articles of Confederation carried this country successfully through the war of independence, I give them high praise, I believe that I give them still higher when I say that they made the national Constitution possible. These articles familiarized the minds of the whole country with the idea of united action and a central government. They proved indisputably the immense advantages which might be obtained thereby; and they proved as certainly that to secure all these advantages it was absolutely necessary that the nation should have a greater unity than they gave to it, and the central government more power. Aided and illustrated by the course of events, they produced a general impression, especially among leading minds, everywhere, that there might be a stricter national unity, and a stronger central government, without absorbing or imperilling those State rights which were deservedly dear to the people of every State. Thus it was that this jealous love for the sovereign rights of the several States yielded slowly, reluctantly, and only step by step, to the inevitable

necessity for closer union. This jealousy was, at the beginning, paramount and extreme. It was not suppressed and overcome, but moderated until it stood in just equilibrium with the prevailing sense of the need and the good of a national existence and a national government. Then these two sentiments, or principles, met and co-operated; and the result was, the Constitution of the United States, formed in the manner to be stated in the next section. And this, I again declare, I regard not merely as the best which could then have been made, but as in itself good, and very good, and the best for the good of the whole nation which could have been made, by any men, under any circumstances.

I do not consider that this constitution came into being in itself perfect, and in itself able to go forward for ever, the instrument of a great nation's growth, prosperity, and happiness, with no more help, with no new influences to bear upon it and give to it added life and energy and efficiency. I mean no such thing. It needed more, a vast deal more, before it could become — what I think it is to be — a permanent instrument of the greatest, the highest, and the completest political good.

The problem to be solved in the establishment of this government, or, as it may be better said, in the formation of this nation, was to create the best possible form of a republican government by the perfect reconciliation of the two elements of central power and reserved rights.

In other words of the same meaning, the problem was to create a system of government which should arm the central power with all the force which it could usefully exert, and yet leave to all whom it gathered within its wide embrace, the utmost possible freedom for self-government, and the strongest assurance that this freedom should be guarded but not weakened, protected and not impaired.

This was done by the Constitution, as far as written words could do it. For after all our experience, at this day no words could mend that constitution in this respect; none could make this balance of forces more perfect. But another thing could be done, and remained to be done. It was to fix the meaning of this constitution by practical construction. To fasten on the public mind the conviction, and fill with it the public heart, that our constitution meant, on the one hand, a preservation of State rights, and on the other, indissoluble national unity; and to root this conviction into the public life firmly, so that no storm could shake it, and so that no devastating force could rend it away. It may not be possible to prevent these two elements from sometimes, during the ages that will come, rising separately into undue prominence. At one time, or by one body or class, the national unity may be urged until it threatens consolidation, and

at another time the principle of State rights may again assert itself too strongly. But it may be hoped that their reconciliation is hereafter to be so established, not by the written constitution only, but by the constitution of the public sentiment and the public will, that it will stand, even as our continent stands upon its rocky base, no more to be moved from its foundation than our continent is moved by the two great oceans which beat upon its shores.

### SECTION III.

#### THE FORMATION OF THE CONSTITUTION.

As the insufficiency of the Articles of Confederation became apparent, and the need of concerted action was felt, efforts were made in that direction. Thus, in 1785, Virginia and Maryland appointed commissioners to form some agreement concerning the navigation of the rivers Potomac and Pocomoke, and the Chesapeake Bay. These commissioners met at Alexandria, and found they could do little good unless some provision could be made for a general tariff of duties upon imports, and they reported the need of this to the legislature of Virginia. Whereupon that State, on the 21st of January, 1786, appointed commissioners, "who were to meet such as might be appointed by the other States in the Union, at a time and place to be agreed on, to take into consideration the trade of the United States; to examine the relative situation and trade of the said States; to consider how far a uniform system in their commercial relations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act relative to this great object as, when unanimously ratified by them, will enable the United States in Congress assembled effectually to provide for the same."

The appointment of commissioners for this purpose was notified to the other States; but only four others, New York, New Jersey, Delaware, and Pennsylvania, responded by the appointment of commissioners. In September, 1786, commissioners from these five States met at Annapolis. All that they did, however, was to lay before Congress and the several States a report, in which they recommend that all the States should appoint commissioners, to meet in convention at Philadelphia, on the second Monday of May, 1787, "to take into consideration the situation of the United States; to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as when agreed to by

them, and afterwards confirmed by the legislature of every State, will effectually provide for the same."

The reasons assigned for bringing the subject before a convention especially chosen for that purpose, rather than leaving it to Congress, were, "that in the latter body it might be too much interrupted by the ordinary business before them, and would, besides, be deprived of the valuable counsels of sundry individuals who were disqualified by the constitution or laws of particular States, or restrained by peculiar circumstances from a seat in that assembly."

Little do the people of this country know, difficult will it be for them to believe, the condition of public affairs and public opinion at that time. But all of us ought to know it, for it may help us to value more that constitution, which, under Divine Providence, was the instrument by which safety from these perils was at last attained. That we may better understand what these perils were, let me give extracts from some of the letters written at that time by some of our ablest and wisest men. John Jay writes to Washington, on the 16th March, 1786: "Experience has pointed out errors in our national government which call for correction, and which threaten to blast the fruit we expected from our tree of liberty. The convention proposed by Virginia may do some good, and would perhaps do more, if it comprehended more objects. An opinion begins to prevail that a general convention for revising the Articles of Confederation would be expedient. Whether the people are yet ripe for such a measure, or whether the system proposed to be attained by it is only to be expected from calamity and commotion, is difficult to ascertain. I think we are in a delicate situation, and a variety of considerations and circumstances give me uneasiness. It is in contemplation to take measures for forming a general convention. The plan is not matured. If it should be well considered, and take effect, I am fervent in my wishes that it may comport with the line of life you have marked out for yourself, — to favor your country with your councils on such an important and *single* occasion. I suggest this merely as a hint for consideration."

On the 27th of June he writes: "Our affairs seem to lead to some crisis, some revolution, — something that I cannot foresee or conjecture. I am uneasy and apprehensive, more so than during the war. *Then*, we had a fixed object, and though the means and time of obtaining it were often problematical, yet I did firmly believe that we should ultimately succeed, because I did firmly believe that justice was with us. The case is now altered, — we are going and doing wrong, and therefore I look forward to evils and calamities, but without being able to guess at the instrument, nature, or meas-



ure of them. That we shall again recover, and things again go well, I have no doubt. Such a variety of circumstances would not, almost miraculously, have combined to liberate and make us a nation, for transient and unimportant purposes. I therefore believe we are yet to become a great and respectable people, — but when, or how, only the spirit of prophecy can discern.

“What I most fear is, that the better kind of people (by which I mean the people who are orderly and industrious, who are content with their situations, and not uneasy in their circumstances) will be led by the insecurity of property, the loss of confidence in their rulers, and the want of public faith and rectitude, to consider the charms of liberty as imaginary and delusive. A state of uncertainty and fluctuation must disgust and alarm such men, and prepare their minds for almost any change that may promise them quiet and security.”

To this letter Washington replies as follows: “Your sentiments, that our affairs are drawing rapidly to a crisis, accord with my own. What the event will be is also beyond the reach of my foresight. We have errors to correct; we have probably had too good an opinion of human nature in forming our confederation. Experience has taught us that men will not adopt and carry into execution measures the best calculated for their own good, without the intervention of coercive power. I do not conceive we can exist long as a nation, without lodging somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the State governments extends over the several States. To be fearful of investing Congress, constituted as that body is, with ample authorities for national purposes, appears to me the very climax of popular absurdity and madness. Could Congress exert them for the detriment of the people, without injuring themselves in an equal or greater proportion? Are not their interests inseparably connected with those of their constituents? By the rotation of appointment, must they not mingle frequently with the mass of citizens? Is it not rather to be apprehended, if they were possessed of the powers before described, that the individual members would be induced to use them, on many occasions, very timidly and inefficaciously, for fear of losing their popularity and future election? we must take human nature as we find it: perfection falls not to the share of mortals. Many are of opinion that Congress have too frequently made use of the suppliant humble tone of requisition in applications to the States, when they had a right to assert their imperial dignity, and command obedience. Be that as it may, requisitions are a perfect nullity, where thirteen sovereign, independent, disunited States are in the habit of discussing, and refusing

or complying with them at their option. Requisitions are actually little better than a jest and a byword throughout the land. If you tell the legislatures they have violated the treaty of peace, and invaded the prerogatives of the confederacy, they will laugh in your face. What then is to be done? Things cannot go on in the same train for ever. It is much to be feared, as you observe, that the better kind of people, being disgusted with these circumstances, will have their minds prepared for any revolution whatever. We are apt to run from one extreme into another. To anticipate and prevent disastrous contingencies would be the part of wisdom and patriotism.

**“What astonishing changes a few years are capable of producing! I am told that even respectable characters speak of a monarchical form of government without horror. From thinking proceeds speaking, thence to acting is often but a single step. But how irrevocable and tremendous! What a triumph for our enemies to verify their predictions! What a triumph for the advocates of despotism to find that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are merely ideal and fallacious! Would to God that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend.”**

**Congress did nothing about the matter. The best men there were deeply impressed with the necessity of taking some measures which might prevent the threatened disintegration of the country; but they were aware of the unpopularity of Congress, and apprehended that their manifesting any desire for the convention would tend rather to defeat than promote it. It must be difficult for us, enjoying as we do all the benefits of union, to understand the very general opposition to it. I will presently endeavor to exhibit the state of the country, by extracts from the letters most likely to understand it thoroughly. Some of these letters refer to the discontents which prevailed throughout New England, and broke out into insurrection in Massachusetts, and with less violence in New Hampshire. The enormous exertions of those States during the war had accumulated a great debt. Their fisheries, which were then their principal reliance, had been neglected and had become unproductive. The taxes were very burdensome. General Lincoln was sent with a body of troops into the west of Massachusetts, in the depths of winter, and pressed upon the rebels, until, after a few had been killed and more made prisoners, the rebellion there was subdued. In other places where courts were to be held, mobs succeeded in preventing the judges from holding court, that judgments and executions might not issue against debtors. In Taunton, General**

Cobb, who had been in Washington's military family during the war, was major-general of militia, and at the same time a judge of the Court of Common Pleas. On the day when the court was to sit, he came upon the open green in front of the court-house, at the head of three hundred men in military array, and confronted a far more numerous mob. They sent to him, demanding that he should desist from opening the court. His only answer was: "I shall this day sit in that court as a judge, or die on this horse as a general." The mob knew their man, and dispersed.

But extracts from letters written at that time, by men who were most likely to understand the condition and temper of the public mind, will present that more accurately than any words of mine.

On the 20th of January, 1787, Colonel Humphries writes thus to Washington, accounting for the omission by those in favor of a federal union to press the appointment of deputies from Connecticut: "The reason was, a conviction that the persons who could be elected were some of the most anti-federal men in the State, who believed, or acted as if they believed, that the powers of Congress were already too unlimited, and who would wish, apparently, to see the Union dissolved. These demagogues," continued the letter, "really affect to persuade the people (to use their own phraseology) that they are only in danger of having their liberties stolen away by an artful, designing aristocracy. But should the convention be formed under the most favorable auspices, and should the members be unanimous in recommending, in the most forcible, the most glowing and the most pathetic terms which language can afford, that it is indispensable to the salvation of the country Congress should be clothed with more ample powers, the States would not all comply with the recommendation. They have a mortal reluctance to divest themselves of the smallest attribute of independent separate sovereignties."

In a letter to Colonel Humphries, Washington says: "For God's sake, tell me what is the cause of all these commotions. Do they proceed from licentiousness, British influence disseminated by the Tories, or real grievances which admit of redress? If the latter, why was redress delayed until the public mind had become so much agitated? If the former, why are not the powers of government tried at once? It is as well to be without, as not to exercise them. Commotions of this sort, like snow-balls, gather strength as they roll, if there is no opposition in the way to divide and crumble them."

And in a letter to General Knox he says: "I feel infinitely more than I can express to you, for the disorders which have arisen in these States. Good God! Who besides a Tory could have foreseen,

or a Briton have predicted them? I do assure you that even at this moment, when I reflect upon the present aspect of our affairs, it seems to me like the visions of a dream. My mind can scarcely realize it as a thing in actual existence,—so strange, so wonderful does it appear to me. In this, as in most other matters, we are too slow. When this spirit first dawned, it might probably have been easily checked; but it is scarcely within the reach of human ken, at this moment, to say when, where, or how it will terminate. There are combustibles in every State, to which a spark might set fire. In bewailing, which I have often done with the keenest sorrow, the death of our much lamented friend, General Greene, I have accompanied my regrets of late with a query, whether he would not have preferred such an exit to the scenes which it is more than probable many of his compatriots may live to bemoan.”

**At length the legislature of New York, by an order which passed the senate by a majority of but one vote, instructed the delegates from that State to move in Congress a resolution recommending to the several States to send deputies to meet in a convention for the purpose of revising and proposing amendments to the federal constitution.**

**On the 21st of February, 1787, the Congress resolved that it was expedient “that, on the second Monday in May next, a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the federal constitution adequate to the exigencies of government and the preservation of the Union.”**

**Twelve States sent delegates to Philadelphia, at the time appointed, Rhode Island alone refusing to appoint any. The convention met, unanimously chose Washington as their president, and proceeded, with closed doors, to discuss the subjects before them.**

**The deliberations of the convention were protracted. All the difficulties in the way of union, all the objections on the part of the States to give up any part of their independent sovereignty, came up, and were discussed over and over, sometimes with considerable asperity of feeling and of language, but on the whole temperately and wisely. Mutual concessions were made. The absolute necessity of union became more and more apparent, as the diversities of opinion and feeling and interest were manifested. Compromises were assented to; and at length, on the 17th of September, about four months after the convention met, a constitution was agreed to, which was substantially the same as it now is.**

By a resolution passed on the same day, the convention directed that the constitution should be laid before Congress, and recommended that it should be submitted in each State to a convention of delegates, for their assent and ratification; and that as soon as nine States should ratify it, it should go into operation.

This constitution was transmitted to Congress, accompanied by the following letter from the president of the convention. An admirable letter it is, stating very briefly, and yet clearly, the principles which governed the convention in framing the instrument, and should forever govern the people in their view of it:—

**“We have now the honor to submit to the consideration of the United States, in Congress assembled, that constitution which has appeared to us the most advisable.**

**“The friends of our country have long seen and desired that the power of making war, peace, and treaties; that of levying money and regulating commerce, and the correspondent executive and judicial authorities,—shall be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men is evident. Thence results the necessity of a different organization. It is obviously impracticable, in the federal government of these States, to secure all the rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty, to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstances, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered, and those which may be reserved. And on the present occasion this difficulty was increased by a difference among the several States, as to their situation, extent, habits, and particular interests.**

**“In all our deliberations on this subject we have kept steadily in our view that which appeared to us the greatest interest of every true American,—the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each in the convention to be less rigid in points of inferior magnitude than might have been otherwise expected. And thus the constitution which we now present is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.**

**“That it will meet the full and entire approbation of every State, is not, perhaps, to be expected. But each will doubtless consider that, had her interest alone been consulted, the conse-**

quences might have been particularly disagreeable and injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish."

**The constitution came before State conventions in 1787 and 1788.** The conventions of Georgia, New Jersey, and Delaware adopted it at once, unanimously. Those of Connecticut, Maryland, Pennsylvania, and South Carolina adopted it by large majorities. Here were seven States, a bare majority of the thirteen, and two less than the number requisite to put the constitution into operation; and it was thought very doubtful whether other States would ratify it.

**Rhode Island would not call a convention.** That of Massachusetts met in January, 1788, and it was understood that a majority of the members were disposed to reject it. The most strenuous efforts were made by those who were in its favor, and were at last so far successful, that on the 6th of February a vote in its favor was carried by a small majority; and at the same time some important amendments were recommended. A convention met in New Hampshire soon after, and here, too, it was understood that a majority was opposed to the constitution; but here also it was overcome, and the constitution adopted by a very small majority, and with a recommendation of amendments.

**The convention of Virginia met on the second of June.** Here, also, the ablest and most influential men of the State were divided in opinion, the celebrated Patrick Henry leading the opposition. But on the 26th of June the constitution was adopted.

**The convention of New York met on the 17th of June.** A decided majority of the convention were opposed to the constitution. Ten States, however, had adopted it, and it would certainly go into operation. This fact had great weight, and on the 26th of July the constitution was adopted, but with the recommendation of numerous amendments. The convention of North Carolina was in session at the same time as that of New York, and at first refused their assent until a declaration of rights, with other amendments, were first laid before Congress or a convention of the States. But on the 21st of November, 1789, that State ratified the constitution. And on the 29th of May, 1790, the State of Rhode Island ratified the constitution; and it then embraced all the original thirteen States.

**On the 13th of September, 1788, Congress resolved** "that the first Wednesday in January following be the day for appointing electors in the several States which before the said day shall have ratified the said constitution; that the first Wednesday in February

be the day for the electors to assemble in their respective States, and vote for a president; and that the first Wednesday in March next be the time, and the present seat of Congress (New York) the place, for commencing the proceedings under the said constitution."

The electors did so meet and vote; and the States which had ratified the constitution chose their senators and representatives. They were eleven in number, Rhode Island and North Carolina not having ratified the constitution until a later period, as above stated. Then the first Congress met, and the Constitution of the United States went into operation, on the 4th day of March, 1789.

Here we close our chapter on the History of the Constitution of the United States. I have given, with as much brevity as seemed to be consistent with distinctness, an account of the circumstances attending the formation of the constitution; the successive steps taken; and the difficulties encountered and overcome. Especially have I endeavored to show how perfectly indispensable it was for the preservation not merely of our national honor and prosperity, but of our national existence. And not only of our national prosperity, but of the prosperity, order, and freedom of the integral parts of which our nation consists, and of the individuals who compose it.

All these things the people of this country ought to know and to remember. This knowledge should help the people to value this constitution aright; to learn, from the many and great difficulties which attended its creation, the perils which will always demand a watchful care and a constant defence of it: for the same or similar erroneous opinions, and the same diversities of feeling and of interest, which caused those difficulties, are operative now, and will perhaps always be operative. The lessons of the past were painful and distressing to those to whom they were first given. They are given to us, also, as well as to them. And in our own generation, other lessons, written in letters of blood, have been given to us, for us and our children. Would that we might hope that the mercy of God will permit these lessons to teach us and all coming generations that local or personal prejudices, opinions, feelings, or interests, become our worst enemies, when they threaten to impair the excellence, to paralyze the energies, or imperil the permanence of that constitution, which, obtained with so much difficulty, has already wrought so much good, and promises to secure it for us and our posterity.

### CHAPTER III.

## THE CONSTITUTION OF THE UNITED STATES.

WE the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

### ARTICLE. I.

SECTION. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of impeachment.

SECTION. 3. The Senate of the United States shall be composed of two



Senators from each State, chosen by the Legislature thereof, for six Years ; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year ; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside : And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any Office of honour, Trust or Profit under the United States : but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment

require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. The Congress shall have Power

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings; — And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

## ARTICLE. II.

SECTION. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[\* The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Per-

\* This clause within brackets has been superceded and annulled by the 12th amendment, on page 35.

sons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A Quorum for this Purpose shall consist of a Member or Members from twothirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—

“I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.

SECTION. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive

Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court; and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers, and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have

original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

#### ARTICLE. IV.

SECTION. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

SECTION. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any claims of the United States, or of any particular State.

SECTION. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

## ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress ; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article ; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

## ARTICLE. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

## ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.



ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA,

*Proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.*

(ARTICLE 1.)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(ARTICLE 2.)

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(ARTICLE III.)

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

(ARTICLE IV.)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(ARTICLE V.)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(ARTICLE VI.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the State and district wherein the crime shall have been committed, which district shall have

been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favour, and to have the Assistance of Counsel for his defence.

(ARTICLE VII.)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(ARTICLE VIII.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(ARTICLE IX.)

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(ARTICLE X.)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest

number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

#### ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

#### ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of

representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof; but Congress may, by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## ARTICLE XV.

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

## CHAPTER IV.

COMMENTS UPON THE CONSTITUTION  
OF THE UNITED STATES.

## SECTION I.

## WHAT OUR CONSTITUTION IS.

From the day the constitution was adopted to this time, the question, what that constitution is, has divided men's minds. At sundry times debated and discussed with earnestness, and arraying different political parties against each other, at length the antagonism which had been growing for generations was intensified into open hostility, and the late war broke forth. Slavery made the political question a local question. But those who seceded from the Union regarded the antislavery movement only as the occasion for exercising their right of secession. Some went so far as to maintain that each State had a right to secede whenever it chose to, and for no other reason than its will and pleasure. But generally they rested their secession upon the principle that the constitution is a compact between the States; that each of the parties has the right of judging whether that compact be violated; and that any party deeming it violated has a right to leave or secede from the Union formed by the compact.

It is to the last degree unjust and unwise in those who stand on either side of this great question to accuse those who stand on the other side, of holding views which are wholly and obviously unreasonable, and are induced only by personal, local, and selfish interests. On the contrary, the question is one of great and inherent difficulty, and from the foundation of the government has divided able and honest men.

One of the forms of this question is this: Is the Constitution of the United States a compact? The answer I should give is: Yes, it is a compact; but it is also much more than a compact.

The question may then be asked, Supposing it to be a compact, is it a social or a federal compact? In other words, is it a compact between all the members of this political society, meaning thereby all the individuals who collectively make up the people, each one entering into covenant with all the rest; or is it a compact between the several States who come together in a federal league?

Here my answer would be, it is both; neither exclusively, but both reconciled into unity.

It is, in the first place, a compact between the States. The very name of this nation, "The United States," indicates this. The States, while still colonies, first met by delegates to think of, and, if they could, provide for, confederation. The States, then, met by delegates, and prepared and submitted to the people the Articles of Confederation. When it became apparent that these were insufficient and unsatisfactory, the States came together by delegates in a convention, which prepared this constitution, and returned it to the States. It was provided that it should go into force, not when such a number or proportion of the people should approve of and accept it, but when it should be ratified by the conventions of nine of the States. So, too, the constitution itself constantly preserves the distinction between the States, as in choosing the President and the members of the Senate and House of Representatives, and continually refers to the States elsewhere.

On the other hand, the constitution itself, as decidedly declares that it is made by the people. "We THE PEOPLE of the United States, . . . do ordain and establish this constitution for the United States of America." It is made *for* the States; but it is the people who make it.

The States met in convention to frame it; but they met by delegates appointed by the people. And when it was framed and remitted for approval and adoption to the States, it was sent there, not to be ratified by their executive or legislative bodies, but by conventions of delegates to be chosen by the people expressly to take this matter into consideration.

These considerations, on the one side and the other, rest perhaps too much upon mere verbal construction. There are those of greater weight which we may invoke to help us answer this question. No precedents in human history can give us much assistance. The work which our fathers had to do was a new work. Leagues and confederacies had been made before, but never under such circumstances or for such a purpose; and the work they did must be judged of by itself.

The very first principle which came forth from the circumstances and doings of the time is, that when men come together to accomplish any great purpose, the will of the majority must govern. Henceforward this great principle must stand forth among human transactions, and wield a force which it never possessed before. There had been forms of government which called themselves republican. But this great word bore a very different meaning formerly from that which it bears now. Our fathers had achieved

their independence. They had all been subjects of a personal sovereign. When they cast off this sovereignty, they had no master; nor were any of them masters over the rest. They came together as political equals: all free, and all equally free. It followed, of necessity, that the will of the majority must govern. Everybody felt, everybody saw, that if the majority did not govern, nothing could govern; and if there were no government, there could be no social order, no organized community.

Under their charters, the people of the different colonies had voted on many important matters, and determined them by a majority. When the colonies became States, this became, of necessity, the universal rule. Within each State no other method was thought of. The machinery of counties and townships was still made use of, because they were accustomed to it, and it was the most convenient way of ascertaining the will of the majority. So when the question came, Shall we form a Union, shall we become a nation, and how shall we become a nation, and what shall it be?—all these questions were answered by a convention of delegates, chosen in the several States by a majority vote. That convention framed a constitution for the people; and the people in the States, and through State organizations, accepted it. This was done in conventions of delegates chosen by majority votes, and the constitution was ratified in these conventions by a majority vote.

And what did the people do? “We the people of the United States . . . ordain and establish this constitution.” Surely words of such emphatic meaning were not chosen by accident or without design. They tell us that the constitution is a supreme, a fixed, and abiding law; ordained and established, so that it might make of the people, from whose will it was born, a nation,—a permanent and abiding nation. This it could not be and do if the very existence of the constitution and of the Union itself were made dependent upon the will and pleasure of any portion of the people who framed it. No portion of the people, whether under the name and form of a State, or county, or township, or by any other designation, could annul it. True to its fundamental principle, the will of the majority, and knowing that the will of the majority may change either from change of circumstances or the teaching of experience, it provides the means of change, which will be considered presently. But unless and until changed in accordance with these provisions, the constitution remains, the fixed and abiding, the ordained and established, framework of our political and national existence.

The principle which underlies the Constitution of the United States, and every State constitution, and upon which all are founded, is this,—the utmost liberty is given to the individual, and yet he,

with others, must yield so much of this as is needed to give due life and efficiency to the nearest and least community of which he is a member; this smaller community joins with others to make a larger; and that a yet larger, until the series ends in a nation which embraces the whole. And in the whole series, from the lowest step to the highest, each for its own sake gives up so much of right and power as is needed to make the community which stands on the next higher step all that it should be. Founded upon this principle, the system of government formed by the Constitution of the United States is not, I think, to be regarded as, merely and upon the whole, the best thing which circumstances permitted our fathers to construct, but as in itself near to the perfection of a republican government.

**I am perfectly aware that this may seem to many persons an obscure statement. Let me try to explain my meaning.**

**The first form of union for a common regulation is in the family; and that the family may be happy, each individual member gives up somewhat of his or her own mere will and pleasure. All our citizens, who are not exceptions to a prevailing method, live in families; and it is there that the work of government begins; there its first lessons are learned; there its habits are formed; there its first fruits are gathered; and there, if the family government is wise and good, those fruits are peace and happiness and mutual assistance and universal improvement.**

**But families need that duties should be performed and advantages secured which demand combination with other families, and the strength and support of united counsel and united action; and to this end families combine into townships or cities. To the town or city, as an organization, are committed all those duties and utilities the need of which has called them into being, and to the town or city is freely entrusted all the power requisite to a full and complete discharge of all those duties.**

**And then the same principle is further applied. Beyond those of the towns and cities are, again, common duties and utilities, which are all those of a certain district; and within this district the towns coalesce into counties, to which, again, as separate organizations, are confided the duties which can be best discharged in this way and by this means; and with these duties goes all the power requisite to the best performance of them.**

**Nor is this principle then arrested. For the counties are gathered into one body, and this is the State. And who are they who then form the State,—who constitute the State? The people, and the whole people. They who first form its families, and then its towns and cities and counties, finally, in their widest assemblage, form the State. And for what do they form it? Precisely for all**



those duties and all those utilities which embrace the whole people, which require for their due performance a due regard to the whole people, and which may serve not only to cement all together by a common interest, a common safety, and a common prosperity, but may use the strength of the whole for the protection of each, and for the preservation of all personal rights, and family rights, and all the rights of those lesser and larger communities into which families and persons are gathered.

**And, then, what power do the people who constitute the State give to it?** Abundant power to discharge all its duties; to do the whole of its work of legislation for the whole, and of common defence and protection through all the departments of government; but nothing more. This, then, is the theory of our State polity; and so far as we are wise, this it is in active operation; and so far as we are truly prosperous, this prosperity is its effect.

**Did the thought ever enter into the mind of a human being that it would be wise for any State to abandon to-morrow all town and city and county lines and organizations, and commit all the duties now performed by their means to the central power of the State?** No one can imagine such a thing. And he who should desire it must, if he would be consistent, go yet further, and propose also to obliterate all family lines, all family organization and authority, and ask of the central power to determine what food shall be placed on every table, and what clothes every member of the household shall wear. No; State rights, in the just and rational meaning of that phrase, are perfectly compatible with national sovereignty.

**We all feel that our present form of government is perfectly adapted to the great end of all republican government, and that is, a wise self-government; and the reason of this adaptation is, that it leaves to the individual, with the least possible control or interference, the freedom of voluntary choice and action. And it gathers individuals into communities, the least, the larger, and at length the largest, only so far as a common necessity and a common good require this, leaving to each one full power to do all that is needful to subserve and protect its best interests, and promote its highest prosperity. And then it seeks so to form these communities, and so to provide for them, and so to act by its common legislation upon individuals and the bodies into which they are gathered, as to lead and guide each and all into that conduct which shall be best for each and for all, with the least possible compulsory action upon any.**

**When the several States came together and formed a nation, what else did they but take a step further forward upon the same pathway, which each State does so well and so wisely in treading for herself? It seems to me that it was precisely this step and no**

other which was taken when the Constitution of the United States was formed, and this nation was born.

**It may be asked, Is there not here a division of sovereignty and of power, which shows that much is wanting to constitute the full strength of a national government?** I answer, The national government has at this moment, by force of the constitution, all the strength — absolutely all — which it needs, or could profitably use, as a central national government. I answer, next, that, by the provisions of our national and State constitutions, the reserved powers of every State may be, and, so far as that State does its duty, will be, prepared and developed to their utmost efficiency, and then imparted to the nation in its need. Did not the efforts made by all the States during the late war prove this?

**The constitution thus framed makes use throughout of State machinery.** More than this, it recognizes the States as separate organizations; and we shall presently see that it watches with the most careful consideration over the interests and safety of the smaller and weaker States which thus came into union with larger and stronger States. But through all this, and by means of all this, the one end and aim in framing the constitution, in adopting it, and in carrying out its various provisions through coming ages, was to ascertain and carry into effect the will of the majority.

**This, we cannot understand too well, is a new thing upon earth.** From the earliest times of recorded history there was never before an instance of a people, large enough to form a nation, perfectly liberated from all restraint, all government delivered over into their own hands, with no power on earth to restrain or coerce them, and then deliberately forming an organic constitution by which they should govern themselves, by the vote of the majority.

**Because mankind had no experience of such a thing as this, our fathers had nothing to help them in their work but their knowledge of human nature, their earnest desire to secure the prevalence of right over wrong, and their wisdom in discovering the means of doing so.** To that wisdom we owe, under Divine Providence, our constitution; and great is the marvel that the experience of nearly a century, in good part a stormy and painful experience, should have revealed so few errors or deficiencies.

**One of the greatest dangers to be guarded against was the abuse of their power by the majority.** In all ages, the supreme power, the sovereignty, whatever its form, had been abused. Emperors, kings, and absolute rulers, under any name, had sometimes been despotic, unjust, and cruel. When the sovereignty was given to a majority, what was to prevent that majority from tyrannizing over a prostrate minority? The answer to this question is, The constitution.

It accomplishes the purpose of curbing the will of the majority, so that while free for all good, it might be restrained from evil, by three means. First, the constitution itself, as the law of the law, as a declaration of the rights of all men, and a fixed and unyielding barrier against any assault upon those rights, exerts a powerful influence to protect the minority against the abuse of power by a majority. Next, the checks and hinderances by which the will of the people is delayed by repeated and protracted consideration before it acquires the force of law; while it is only delayed, and not prevented from enforcing itself as law after it has received due consideration. This is accomplished mainly through the structure of the legislative body; and we shall treat of it more fully when we come to consider the form and functions of the body to which the power of making law is entrusted.

But most of all is the supremacy of law and right secured by the judicial power, its full authority, its independence, and its place and function as interpreter and defender of the constitution. This subject, also, which we deem of vital importance to a just comprehension of our constitution, we shall treat of more fully when considering the judicial power: its structure, its duty, and its value.

## SECTION II.

### THE RECONCILIATION OF STATE RIGHTS AND NATIONAL SOVEREIGNTY.

From the facts stated in the chapter on the history of the constitution, it will be seen that the greatest difficulty in forming and in adopting it arose from the reluctance of the people in the several States to relinquish any part of their independent sovereignty. They saw and they felt that if the United States became a nation, it must possess, in all national matters, sovereignty; and that, so far as it was sovereign, the several States were subordinate. As this was the great objection to the constitution, so the adoption of the constitution must be regarded as a yielding of the States on this point.

It must, however, be remembered, that while our nationality involved the giving up by the States of so much of their sovereignty as was necessary to constitute a national sovereignty, this necessity went no further. The several States gave up nothing which they could hold, and the United States be a nation. Here was the practical difficulty for those whose work it was to frame a constitution; and they displayed nothing less than a marvellous wisdom in overcoming

this difficulty, or in taking from the States and giving to the Union all that was necessary to make the Union a nation, and leaving to the States all that was not necessary for this purpose. Let us now look at the provisions by which they effected this purpose.

The second clause of the sixth article of the constitution is as follows: "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding."

This article asserts and establishes the nationality of the Union, and the sovereignty of this nationality; for that is the necessary meaning and effect of making all laws and treaties made under its authority the supreme law of the land.

This sovereignty being established, the next question is, What does it embrace, or how far does it extend? The answer is, Just so much and so far as it is carried by the constitution itself, and not a jot farther. The constitution being a written instrument, the purpose of which was to create a national constitution by abstracting so much of the sovereignty of the States as was necessary therefor and putting together what was thus taken, the natural and just construction would have been, that whatever was not taken from the States, expressly or by necessary implication, was left to them. But to make this sure, Articles IX. and X. of the amendments were adopted. They provide, that "the enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. . . . The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The constitution has been subjected in all its parts to the severest examination and the most acute criticism. But it may safely be said that no one has succeeded in pointing out clearly and rationally, any claim or assumption in the constitution of any right or power which the Union possesses or can exercise not necessary to our existence and prosperity as a nation. But the principles of construction above stated, and the amendments above cited, as they reserve to the States whatever is not taken from them, and as they give supreme authority to laws made under the constitution, required express declarations as to what subjects Congress could make laws about, and also as to what things the States should not do. The first will be found in the eighth section of the first article, beginning, "The Congress shall have power;" the second may be found in the tenth section of the same article, beginning, "No State shall," &c.

We shall have occasion hereafter, in the course of these comments, to refer more particularly to some of these permissions and to some of these prohibitions. Here we will only say, that a familiar principle of legal construction will apply to both of these enumerations; namely, that an enumeration which purports to be complete and exhaustive, excludes all items not expressly included.

A most important provision for the preservation of State rights is to be found in the peculiar construction of the Senate. The representatives in Congress are apportioned among the several States according to the number of their population. But the Senate is composed of two senators from each State. This provision is apparently a very simple one; but it is of extreme importance.

It was a compromise—more than ingenious, for it was a wise and just compromise—between extreme views, both of which were pressed with very great urgency. On the one hand, it was said to be of the very essence of a republican representative government that all its citizens should be equal in power and privilege. If the United States were to be a nation, it was to be a republic, and could not, without losing an essential quality of a republic, give to a portion of its people a distinct advantage in the exercise of political power over any other equal portion. Admit that a large State would have more power in the government than a small State, no citizen or citizens of the larger State would have more power than the same number of citizens in the smaller. If the larger State had more power, that only meant that its citizens, taken together, possessed the same power that they would have if, in the same number, they lived in small States; and why should their political power be taken from them because they united together to form a large State?

On the other hand, it was contended that, for many purposes, it must be considered that the States had come together to form a Union. They had, each one of them, occupations and interests which were peculiar to that State. If they joined with the much larger States in a government which was purely popular, the small must yield to the large in all things, and be crushed in the conflict. Because the Union would be a republic, much power must be given to a merely popular vote, or to majority of numbers. But because it was a Union formed from independent and sovereign States, who gave up much of their independent sovereignty for the sake of union, some regard must be paid to their rights as States, and an equality between the States must be conceded in some important points of political power.

This was admitted; and how much was conceded may be inferred from the fact that Delaware, with a territory of a little more than two thousand miles, and a population of about one hundred thousand,

has the same representation in the Senate that New York has, with a territory more than twenty times as large, and a population about forty times as large. Hence the two States have equal powers as to the acceptance or rejection of treaties, the confirmation of all appointments by the President, and in trials of impeachment. Moreover, as each State has as many electors of President and Vice-President as the whole number of its representatives and senators, the smaller States have in this important matter a power larger in proportion to the number of their population than the larger States possess.

But perhaps the most important advantage secured to the smaller States is, that they have equal power with the larger as to any amendments of the constitution, as they can be made only by three-fourths of the several States; and should there be an agreement in opinion or feeling between all, or nearly all, of the smaller States, it might come to pass that such amendments would be made or be rejected by much less than a majority of the whole people.

### SECTION III.

#### THE DISTRIBUTION OF POWER.

There are three great governmental powers or functions. One is the executive, which carries all the laws into effect; another is the legislative, which makes all the laws; the third is the judicial, which determines whether that which is alleged to be law is in fact law, and which construes and interprets the laws, or declares what they mean, and how they apply to any particular case.

It is perfectly certain and obvious to any one who will think about it, that the union of these three powers in the same person or body makes him or it perfectly despotic. For if he who executes the laws makes them just as he pleases, and then construes and applies them just as he pleases, he must needs be a perfect despot, or, as the modern word is, an autocrat, which means one who has all power in himself.

Then it should be obvious to us, for it is quite as true, that progress away from despotism, progress in a well-ordered and guarded liberty, depends upon and may be measured by the degree in which these three great and fundamental powers of government are separated from each other, and each of them protected from the invasion of the others. Then the executive can do nothing but execute the laws which are made for him by one body and interpreted for him by another, over which he has no absolute control. Legislators

have less temptation to make laws to strengthen their own hands; because the laws, when they are made, pass out of their hands, leaving behind them no power to enforce the laws. The judicial body is under still less temptation to interpret laws wrongly; for it can gain nothing by it, as it has nothing to do with making the laws or with enforcing them.

Hence, as civilization advanced in the world, and governments improved, this distinction was made, and the importance of it discerned. Thus, in England, the government is monarchical in form, but a mingled web of aristocracy and democracy in fact; for the English king or queen has no political power, and is only a pageant. But there are many republican elements in their government, and a great deal of freedom in the nation. And there this distinction between the three great powers of government is carried out to a considerable extent. Our fathers, when they lived in colonies subject to Great Britain, had more of this distinction than they had in the parent country, and saw it more clearly and valued it more highly. And when they became independent, and framed their own constitutions, State and national, they took excellent care to make this distinction as perfect as possible.

We shall see as we go on that this distinction is not perfect; and perhaps we shall have reason to look upon this imperfection as a weak spot in our national constitution, and to think it would be strengthened if these great powers were more distinctly separated, and the bodies which hold them made more independent of each other.

#### SECTION IV.

##### THE EXECUTIVE POWER.

The executive power is vested in a President. He holds his office for four years; and there is nothing in the constitution to prevent him, or the Vice-President, from being re-elected any number of times.

Originally the method of electing the President and Vice-President was very different from that now in force. Then the electors voted for two persons, and whoever had the highest number of votes (if he had a majority of all the votes) was President; and the person having the next greatest number of votes was Vice-President. If there was no majority, the House of Representatives, voting by States, and each State having one vote, chose the President. At the election for 1801 there was no majority,—Thomas Jefferson having sixty-three votes; Aaron Burr, the same number; John

Adams, sixty-five; C. C. Pinkney, sixty-four; and John Jay, one. On the first ballot in the House, eight States voted for Jefferson, six for Burr, and the votes of two States were divided; three States having then been added to the original thirteen. There were thirty-four ballots without any change from the first; but on the thirty-sixth ballot Jefferson had ten votes and Burr had four: so Jefferson became President, and Burr Vice-President. This exhibition of the inconvenience and embarrassment which might arise from that method of electing these officers, led to the 12th amendment, which was adopted in 1804, and has been in force ever since. By this amendment the electors vote in distinct ballots for President and for Vice-President. The provisions for filling these offices in case no one has a majority will be seen in the 12th amendment, as heretofore given in the constitution.

**The theory of choosing the President and Vice-President by electors is excellent; but it does not work well.** This theory is, that the people in the several States should choose their wisest men, and that the electors so chosen should choose the men for these high offices who, in their judgment, were best fitted for them. But in point of fact the electors exercise no judgment whatever. They are simply the instruments of the party which chooses them, and are chosen to vote for the candidate of the party, and always do so. As soon as the electors are chosen and known to the country, it is certainly known who will be President and Vice-President, the vote by electors having become a mere formality. These officers are, in fact, chosen by a popular vote. But the machinery of electors chosen by States may put the choice of President and Vice-President into the hands of a minority of the people, because each State has as many electors as it has representatives and senators; and a small majority in a large number of the smaller States might constitute a majority of the electors, while the minority of the electors were chosen by and represented a majority of the people. There have been, on this and other grounds, many attempts to avoid these mischiefs by a direct popular vote. As yet, however, they have not succeeded.

**For the powers of the President, we refer to the second article of the constitution.** We must, however, look to the seventh section of the first article for a most important power given to the President; it is what is commonly called the veto power.

**Every bill which has passed the House and the Senate is presented to the President.** If he approves and signs it, it becomes a law. If he does not approve it, he may return it to the House in which it originated, with his objections. It then becomes a law if it be passed by two-thirds of each House. He must return it within



ten days (Sundays excepted) after it is presented to him, or it becomes a law without his signature. But if it does not receive his signature, and before the ten days expire Congress adjourns, so that the President has not the ten days to keep it and then return it, it is not a law.

This veto power was probably copied from the British system, and seems to give the President some portion of monarchical power. But in the British system it has become wholly obsolete. The phrase, "King, Lords, and Commons," as designating the legislative power, is meaningless; the lords and commons having the whole power of legislation, and no king has ventured to interpose his negative since 1692: This negative of the king would be final, for in theory it is absolute. But if a British sovereign should undertake at this day to resist the power of the lords and commons by refusing his assent to a law which had passed both Houses, it would cause a revolution; while our Presidents have used this power, and sometimes quite freely. It might seem, therefore, that we, republican as we are, have more of a king than Great Britain has.

But this is not the right way of looking at this matter. The negative of the President amounts to just this. If he disapproves a bill, he can require a reconsideration of it by the Senate and House of Representatives, with any light which he may throw upon the objections to the bill, and then a vote of two-thirds. This is all. It is a wise precaution against bills which might be passed inconsiderately, or under the influence of personal or party passion, by a bare majority. This is a power properly placed in the hands of the chief magistrate; and whenever a President believes that a bill is so objectionable or so questionable as to call for reconsideration and a larger majority, it is his duty to require this by withholding his assent.

As to his preventing a bill from becoming a law by "pocketing it," as is the phrase, Congress, which is the master of its own adjournments, can avoid that by continuing their session. It is, however, not the right way. Congress should not be compelled to remain in session, and, if it is the close of the political year for which the representatives are chosen, cannot remain in session. The constitution cannot intend that the President in such case should prevent a bill from becoming a law by merely keeping it from Congress.

#### THE VICE-PRESIDENT.

By the first section of the second article of the constitution it is provided that in case of the removal of the President from office, or

his death or inability to discharge the duties of the office, the same shall devolve on the Vice-President; and Congress may provide by law for the case of the removal, death, resignation, or inability, both of President and Vice-President, declaring what officer shall then act as President. Accordingly Congress has provided by law that, in such case, the President of the Senate *pro tempore*, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives for the time being, shall act as President until the disability be removed or a President be elected.

The Vice-President is President of the Senate, but has no vote, unless they be equally divided. This constitutes a difference between the Senate and the House. The people choose the President of the Senate when they choose the Vice-President of the nation. The House of Representatives chooses its own Speaker. The Senate also chooses a President *pro tempore*, who takes the place of the Vice-President when he is absent.

The second article of the constitution provides that no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the constitution, shall be eligible as President. The twelfth article of amendment provides that no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President.

## SECTION V.

### THE LEGISLATIVE POWER.

There can be no doubt that our fathers profited by the experience of Great Britain in vesting the legislative functions in two bodies. There it grew up by what we call accident; and, indeed, the early history of the English Parliament is somewhat uncertain. Now, however, the Parliament is composed of the House of Lords, of which the members sit by hereditary tenure (excepting the Scotch and Irish lords, who are elected from the peers of each country, and are called representative peers), and the House of Commons, which consists of members chosen by the votes of those who possess the elective franchise.

We have no lords, and no hereditary tenure of office or place, and, it may be hoped, are not likely to have them. And the resemblance of a Senate to a House of Lords, however remote, caused a prejudice against this division of the legislative functions between two Houses. There was, indeed, great opposition to this; and some wise men doubted its expediency and safety. But better counsels

prevailed. By the Articles of Confederation Congress had consisted of only one body; and a part of the feebleness and inadequacy of that confederation was attributed to that fact. It was, moreover, seen that the requirement of the consent of two distinct bodies supplied a useful and necessary protection against hasty and passionate legislation, not only by the delay it caused, but by the twofold consideration of a proposed measure. Not only so, but by providing that one of the Houses should be chosen in a different way and by a different body from the other, any measure would be looked at under a different aspect, and a decision be governed by somewhat different influences.

In a republican government, acting under a constitution carefully discriminating between the different functions of government and placing them in different hands, there is always danger that one of these functionaries will strive to enlarge its own power by absorbing the functions of another. The executive must be guarded from the temptation and the opportunity of encroaching upon the legislature or the judiciary. The legislature must be guarded from the temptation and the opportunity of encroaching upon the executive or the judiciary. At different times we have heard the cry of "Cesarism" raised, which means that there are some among the people who suspect the President of aiming at more than republican,—at imperial power. At other times, watchful men have thought they saw a mischievous increase in the pretensions of the House of Representatives, and perhaps in the power they assumed and exercised. Whether these suspicions were well or ill founded, nothing can be better founded than the fear that a body possessing legislative powers will always be exposed to the temptation of increasing that power, and making themselves sovereign in fact, however another name and appearance may be preserved. History proves this. The *Long Parliament* in England voted itself perpetual, and for a time was supreme. Holland was formerly governed by one representative body, annually elected. They afterwards voted themselves from an annually to a septennially elected body; then for life; and finally exercised the power of filling up all vacant offices: and thus the government became an oligarchy and a tyranny, although retaining the name of a republic. Think of it as we may, this danger will always exist. And there can be no more efficient barrier against it than the division of the legislative function, and conferring it upon two bodies, each of which will watch the other, and detect, expose, and resist any attempted encroachment.

Then, also, greater stability is given in this way to the course of legislation, by obstructing hasty and inconsiderate change, and increasing the probability that all actual objections to the proposed

change will come under consideration. And there is also an advantage in the greater permanence which is gained, if to the members of one of these bodies a longer term of office is given, as is the case with our Senate.

There is still another reason. It was deemed desirable to give a portion of executive power, or rather a direct check upon the executive power, to the legislative body. And this could be done more safely and more conveniently if there were two bodies, one smaller and more permanent than the other, and by this permanence further removed from the passions or prejudices of the hour and the fluctuations of public opinion; and to this smaller body was given this restraint over the executive.

## SECTION VI. OF THE SENATE.

The Senate is composed of two senators from each State; and each senator has one vote.

It has equal and concurrent power with the House in all the common topics of legislation, excepting that the seventh section of the first article declares that "all bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills."

This provision is undoubtedly copied from the British Parliament. There only the House of Commons can originate money bills, as they are called. How this usage, which has now become a settled rule, grew up, is not certainly known: but probably from the fact that the House of Commons itself began by the calling together by the King of persons from the boroughs, cities, and counties, when he wanted supplies of money from them. In our constitution, this privilege of originating a measure which would tax the people was given exclusively to the representatives, because that body came directly, and most recently, from the people. Perhaps an additional reason was found in the wish to balance the two Houses properly. As the Senate must concur with the President in making war and peace, and so may be said to have hold of the sword of the nation, it was thought well to give to the representatives the exclusive power to originate money bills, and thus to give them a stronger hold upon the nation's purse. In Great Britain, the lords can do nothing with a money bill but accept or reject it. Our Senate, however, may propose amendments, as in other bills.

The senators are not chosen directly by the people of a State, but by the legislature; thus making another difference between them and the representatives. The constitution does not prescribe the manner in which senators should be chosen; but, as it was obviously desirable that there should be some uniformity in this respect, it was provided by a law approved July 25th, 1866, that the legislatures of the several States should elect senators in the following manner: Each House, by a *viva voce* vote of each member present, shall name a person for senator, on the second Tuesday after the meeting and organization thereof. On the day following, both Houses shall meet in assembly. If the same person has received a majority of all the votes cast in each House, he shall be declared duly elected senator; if not, the assembly shall proceed to choose a person by a *viva voce* vote, and if that person shall receive a majority of all votes of the joint assembly, a majority of the members of each House being present, he shall be declared duly elected. If no senator is elected on the first day, the joint assembly shall meet and take at least one vote each day, until an election is secured. When a vacancy shall occur during the session of a legislature, the same proceedings shall be held on the second Tuesday after notice of such vacancy shall be received.

The only objection to this method is, that it puts it in the power of a majority of either House to prevent an election, by staying away from the assembly. The constitution does not declare whether the governor of each State must approve the election, as in the case of common bills; but usage seems to have settled that his approval is not necessary, and consequently that he cannot invalidate the election by withholding his approval.

Senators are elected for six years; and are divided, by senatorial act, into classes, — one-third, or as nearly that as is practicable, going out every two years; care being taken that the two senators from each State shall go out in different years.

This term of six years was a compromise between extreme views: some of those who framed the constitution wishing them to retain office during good behavior, — that is, for life, unless they misbehaved; others saw no reason why they should retain office longer than the representatives. But the desire to give to the Senate more stability and permanence prevailed, and so the term of six years was adopted.

We have seen that the Senate, if not a sharer in the executive power, holds at least a most important check upon it, inasmuch as the President can take but few important measures without the advice and consent of the Senate. Only with it can he appoint ambassadors, consuls, and other public ministers, and judges of the Supreme Court. Congress may by law vest the appointment of

inferior offices as they think proper, — in the President alone, in the courts of law, or in the heads of departments; and have done so to some extent.

The President alone, as the supreme executive of the nation, can make treaties with foreign States and powers. But the treaty is not valid unless two-thirds of the senators present when the vote is taken concur. As the Senate thus seems to partake of the executive power, so it seems to partake of the judicial power, in that it sits as a supreme court for the trial of impeachments. That topic, however, will be treated of in its own section.

#### POWER AS TO THEIR OWN MEMBERS.

Each House is the judge of the elections, returns, and qualifications of its own members. This would seem to be a power of judgment over the right of any person to become a member. Generally, if this right comes into question, it is by the petition or remonstrance of some other person who claims to be a member, thus giving rise to what is called a "contested election." When such a case occurs, it is investigated according to the rules of the House to which contestants claim to belong. This is usually, or perhaps always, done through a committee, who ascertain the facts, and report them to the House, which then proceeds to adjudge the question. The power to expel a member is given by the clause immediately following. The question may be asked, If either House of Congress exercises either the power of admission or the power of expulsion wantonly and wrongfully, what is the remedy? The answer is, There is no remedy. Some court, or body, or tribunal, must decide all questions without appeal, or there would be no final decision. This final power is given to each House upon these questions. A wrongful decision would be, in this respect, like the verdict of acquittal by a jury of a person charged with crime, and proved beyond all rational question to be guilty. If the jury see fit to say he is not guilty, he must go free, and the verdict cannot be annulled or questioned. In Massachusetts, where each house of the legislature has this power, a man was expelled for misbehavior from the House of Representatives. He carried the case to the Supreme Court; but that body decided that they had no power over the decision of the House.

#### SECTION VII.

#### THE HOUSE OF REPRESENTATIVES.

Representatives are chosen by the people of the several States. They are apportioned among the States according to the number of

people in each State, and this number is ascertained by the national census, of which more will be said presently. The second section of the first clause of the constitution provides that the number of representatives shall not exceed one for every thirty thousand; that an enumeration of the people shall be made within three years after the first meeting of Congress; that each State shall have at least one representative; and that, until an enumeration is made, New Hampshire shall be entitled to three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. Sixty-five in all. The present number is two hundred and ninety-two. A table will be given presently, one column of which, giving the number of representatives to each State, shows that four of the thirty-seven States have but one representative each, while New York has thirty-three.

## SECTION VIII.

### PRIVILEGES OF SENATORS AND REPRESENTATIVES.

#### FREEDOM FROM ARREST.

The first paragraph of the sixth section of the first clause of the constitution contains a provision which is very easily misunderstood as to its ground and purpose. The provision is, that senators and representatives shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective Houses, and in going to and returning from the same. This provision is undoubtedly imitated from a rule of the British Parliament. There it grew up as a personal privilege, which, in the days when arrest for debt was allowed and practised far more than it is now, was of great value.

But this provision was not inserted in our constitution on the same ground, although it has the same effect. It was intended to secure to the nation the services of its servants, when employed in attending to its business, from hinderance or interruption from the pecuniary claims of individual creditors. It does not relieve the members from the necessity of answering in person when they have committed some public wrong, for the public interest requires that all men should be amenable to the law in such case; but they cannot be arrested for debt, nor taken on execution for debt.

---

NOT TO BE QUESTIONED ELSEWHERE FOR SPEECH IN EITHER  
HOUSE.

The last clause of this same paragraph provides that they shall not be questioned in any other place for any speech or debate in either House. This, also, is not intended merely as a personal privilege to the members; but to secure to them, for the public good, the most perfect freedom of discussion and debate. Nor is it intended to authorize or sanction any abuse of this power, by permitting members to indulge, without check or fear of punishment, in personal vituperation, or in malignant slander, or in giving credit and wide diffusion to statements and allegations which they know to be false. It is said that members shall not be questioned for speech or debate "in any other place." But, then, in that place, when such malignity expresses itself, it may be questioned, and should be questioned. This is one of those powers which must be given; for the public good imperatively demands it, however liable to abuse it may be. Surely the wise framers of our constitution were not mistaken in believing that the sense of honor and of duty of each House would suffice to prevent any frequent or extreme misuse of the right of debate, even if the sense of personal decency did not suffice to restrain members.

SECTION IX.

POWER TO REGULATE COMMERCE.

The clause of the constitution which relates to this subject gives power to Congress "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Every part of this clause, and almost every word of it, has given rise to much discussion, and presented questions not without their difficulty. We will first consider

COMMERCE WITH FOREIGN NATIONS.

It is obvious that such a power is absolutely necessary to our holding any distinct place among the nations. It is probable that some commerce existed among different tribes and races from the earliest dawn of civilization. With the growth of civilization commerce grew, and in recent times it has reached an enormous extent. It seems to be an appointed means of bringing nations together, and



establishing among them a community of interest. But international commerce cannot be carried on without rules and laws, which each nation must make for itself; but which, when they prevail among civilized nations, acquire, by general and universal usage, the force of laws. There are many such laws; and each nation must make them for itself, with the modifications or peculiar provisions which its own circumstances and interests require. Our nation could not have made them but for the power thus given to it by the constitution. And it is but reasonable to say that a clause of such vital importance should receive a liberal and favorable construction.

**This it has received. It has been held to include not traffic** merely, or buying and selling, but intercourse between nations, and all the forms and instruments of that intercourse. Thus it includes navigation laws, and all the laws which relate to shipping and the carriage of passengers and of cargoes. It has always been conceded that it was within the province of Congress not only to make rules for (which is what "regulate" means) existing commerce, but to build up our commerce, and give us a full share of the commerce of the world. This has been done, and most successfully; and with little opposition, because there was little diversity among the several States in regard to this matter. It was far otherwise, however, in reference to the next provision of this clause, which relates to the

#### POWER TO REGULATE COMMERCE AMONG THE STATES.

**Here a distinction has been taken. It has been maintained that** power to *regulate* means only power to make rules for; while to many measures proposed at different times the objection has been made, that their purpose was not so much to regulate a commerce which then existed, or which might exist of itself, as to make rules the effect of which would be to *create* commerce. It is impossible to draw a sharp dividing line between these two things. Undoubtedly regulation is one thing and creation another; but it is not always easy to say where the one ends and the other begins. This controversy is not yet over; and perhaps it will continue in some form for successive generations, as new occasions for reviving it occur. It may be said, however, that the sense of the people has in a great degree settled down to the conclusion that Congress, under the power to regulate commerce, may make proper rules respecting the intercourse of the people of different States, and the means thereof, so far as they relate to water-ways, to our great lakes, to the whole coasting trade of the ocean or the lakes, and to the manner of carrying on the same.

But, then, we come upon a question to which our constitution gives no direct answer,—What is the power of Congress over, or in relation to, instruments of internal domestic commerce, which could not by any possibility have entered into the contemplation of Congress; that is to say, What is the power of Congress over

#### RAILROADS.

They have now spread their net-work over the whole country, and are constantly and everywhere growing in extent and in importance. If we ask, What is the power of Congress in relation to them, we must answer this question by the construction we put on the clause of the constitution which gives Congress power “to regulate commerce between the States.” For already are these iron ways the instruments of a commerce which rivals, to say the least, the commerce along our water-ways, and has already superseded a more circuitous water-borne commerce in some parts of the country, and threatens, or promises, to do so in others.

Some things seem to be settled by usage and precedent. Congress can charter railroads, and can help railroads by guaranteeing their bonds, and by grants of the public domain. While there have been objections, sometimes very urgent objections, to these measures, and at this day there are those who hold them to be unconstitutional, it must be admitted that the objections were mainly to the improvidence of the guaranty, or loan of credit, and the extravagance of the donations of land. These objections have had power enough of late to cause Congress to stay its hand, and will undoubtedly cause much more careful consideration and a less liberal aid by grant or by guaranty in the future. But we think it practically established, that, within reasonable limits, and a due regard to expediency and safety, Congress may exercise these powers with the approval of the people. Indeed, it must be admitted, even by those who are loudest in charging Congress with folly and extravagance, that the railroads thus far built by means of this assistance are of great utility, and that the population which they are causing upon what without them would have been a deserted and inaccessible wilderness, have added very much to the value of the lands reserved by the government.

But can Congress actually build a railroad with the public funds? This most important question is already raised, and must soon be pressed upon Congress and the people. That a thoroughly built and equipped railroad, competent to carry from the far interior to the seaboard the vast produce of those fertile States,—that such a railroad would be of great utility, no one would deny. But, on

the other hand, who will say that it would be of utility enough to justify a disregard of the constitution if that distinctly opposes such projects? Does it distinctly oppose them? We cannot but think that the clause which empowers Congress to regulate commerce, whatever was originally intended by it, may fairly be taken as meaning that Congress may provide for, care for, and promote the commerce between States, and the instruments of that commerce. Whether these be canals or railroads, we should say that Congress may construct them, provided always that the only object in constructing them is to provide for, promote, and facilitate the commerce between the States.

#### CAN CONGRESS REGULATE THE FREIGHTS ON RAILROADS?

**This question has recently become one of much importance, and of no less difficulty.** That Congress may regulate the freights on railroads which it charters, and that it can affix what terms it will on any subsidies or grants it offers to railroads, is certain. The true question is this: What right has it, under its power to regulate the commerce between the States, to interfere with the charges of railroads for carrying produce from one State to another?

**The importance of the question lies in this.** Railroads have become perfectly indispensable instruments for this internal commerce. Without them it would have been impossible for our surplus produce to have found its way to the seaboard, at a cost which would have permitted merchants in the Atlantic cities to buy it and ship it abroad. Therefore the interior of the country undoubtedly owes its rapid growth in population and wealth to these railroads. But, on the other hand, it is alleged that the railroad companies charge excessive freights; that they have in many instances "watered" their stock, — that is, they have greatly increased its par value beyond what it actually cost, and then they charge freights which shall pay them satisfactory dividends on this nominal value, thus laying an intolerable burden on the transport of produce. The States which chartered them cannot, or, under the influence of the railroad companies, will not, interfere. Can Congress help the producers, by requiring the companies to carry their produce at a cheaper rate? Certainly not, unless they may do this under the clause giving them power to regulate the commerce between the States.

**In the first place, this is certainly a commerce between the States.** Illinois sends her wheat to New York or Boston, sells it there, and buys goods there manufactured or imported, which are brought to Illinois; and the price to the consumers is increased by

the high cost of freight. This commerce Congress can "regulate." But does that mean that it can interfere between producers and carriers, and determine what the one shall pay to the other?

There are two objections to this. One is, that this kind of "regulation" would seem to interfere too much with private and personal business. If the merchants of New York engaged in shipping goods to and from Europe complained that the ship-owners asked such excessive freight that they could no longer export goods to foreign countries, or import them thence, and therefore called on Congress to remedy the wrong, and "regulate" this commerce by compelling the ships to lower their freights, Congress would probably answer, No, we cannot "regulate commerce" in that way. How, then, can they be called on to do the same thing as to our internal commerce?

To this objection this answer might be made: The ocean is the great highway of nations, open and free to all; and competition is abundantly able to settle the question between shippers and freighters in the right way. If freights are so high as to make the shipping business unusually profitable, more ships will be put on, until freights are reduced within reasonable limits. And if they are reduced beyond such limits, ships will be taken off, until they rise again. The mere course of trade, if left in freedom, being sure to adjust these profits, on one side and the other. But it is not so with railroads. They are monopolies; for the immense expenditure of money which they require, and the political power they can exert if disposed to, make them monopolies in fact. If left in freedom to work their pleasure, there is no actual competition sufficient to counteract their power of directing matters solely with a view to their own profit. The power of government must interfere, for the plain reason that nothing else will restrain them.

The other objection to asking Congress for this relief is, that it will interfere directly with State rights and privileges and interests; and perhaps violate a provision in the ninth section of the first article, "that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." It will be exerting a power not expressly given to Congress, and therefore reserved to the States themselves, by a provision in the constitution itself; and this provision should be made effectual, by observing it not in its letter merely, but in its spirit and principle. Now, railroads are chartered by the States; they are the creatures of the States; and to the States alone must belong the power of determining what shall be paid to them by those who make use of the facilities they offer.

To these objections the answer might be made, that the power to regulate the commerce between the States is expressly given, and also

the power to make all laws necessary and proper for carrying into execution all powers given. The railroads are often chartered by different States for the express purpose of making a continuous railroad crossing many States, each State covering its own territory by the charter it gives. It is a very common thing, also, for railroads which were independently chartered to combine together so as to make in fact, and for some purposes in the view of the law, but one railroad. These long and continuous railroads are more than indispensable instruments of our internal commerce: they are its only instruments. They created it; they alone carry it on; and without them much the largest part of it would have no existence, and would not be possible. What doubt can there be that Congress may regulate this commerce? Then comes the difficult question,—In what way can they regulate it, except by fixing reasonable terms on which it can be carried on? If, as is alleged, injustice and oppression now exist, they cannot, in this country, be patiently or permanently endured. It is better that the remedy should be applied in some orderly, legal, and rational way,—by the States, if they will and can; by Congress, if the States will not or cannot,—rather than by an uprising of the people, which might give rise to measures that would be neither orderly, legal, nor rational. And as to a preference of the ports of one State over those of another, no man would defend or propose any measure for the sake of such preference. But if some advantage to one over another seemed likely to arise indirectly from a measure adopted for the general benefit, this could not be deemed a decisive objection to it.

Such, as well as we can present them in a few words, are these questions, and the arguments which may be urged on either side. How the questions will be finally decided, it is impossible to predict. When this clause was inserted in the constitution, it was undoubtedly intended to prevent a State from laying a tax or excise on the productions of any other State, or, by other harassing impediments, obstructing the commercial intercourse between them. But whatever was intended, there stands the clause, to be fairly and rationally interpreted. If, in its original intent, it did not embrace circumstances which could not have been at that time anticipated, it may, nevertheless, have manifested a spirit or established a principle which may be rationally applied to these new circumstances; and, if so, they should be applied to them.

Perhaps the just conclusion is, that while Congress must hesitate before it undertakes to build railroads, or to prescribe the fares and charges on railroads which it did not charter, it may, by encouraging the building of railroads by wise and timely assistance, by provisions directed against frauds and abuses, and by a system of

prohibitions carefully adjusted to circumstances, exert its power to regulate commerce between the States in no unconstitutional way, and yet do justice to all parties, while it gives to that commerce facilities and safeguards which will greatly promote its growth and prosperity.

#### INTERNAL IMPROVEMENTS.

It may be another difficult question, how far Congress may go in improving our water-ways by removing obstructions, constructing harbors, and by similar measures. But the prevailing tendency of public opinion is towards a liberal construction of the clause in this respect. If we go one step further, and ask whether Congress can *create* new water-ways, by building canals by which goods may be borne from State to State, and through intermediate States, the answer may be still more difficult. Here local interests may come into full play. Why should a canal be made from funds which belong to the whole nation, when it can benefit only one part, at the cost of all the rest? One answer is, that by these and similar means, all parts may be benefited in turn. Another and a better answer is, that the gain of any one part of the nation is the gain of the whole; for the whole can be enriched and strengthened only as its various parts are, not all at once, but successively, as opportunity occurs for each. It is only local selfishness which can refuse to be glad when the people of another region are benefited. It becomes a different question when the objection to a measure is, that it will not promote our internal commerce as a whole, but draw away from one part what it gives to another. It is, however, obvious that all arguments of this kind mainly refer to the expediency of the proposed measure, leaving the question whether Congress has the right to pass it, aside. So it may be; but unfortunately, while human nature remains what it is now, those who look upon a measure as expedient, especially if it be expedient for them, will favor the most liberal construction which brings it within the power of Congress; while those whom it hurts will be sure that a just construction of the constitution would prevent it. It may be said, however, on the whole, that with the prodigious growth of the country and of all its various interests, and the springing into existence of new interests never dreamed of when the constitution was made and adopted, the conviction has forced itself upon the people that, while a loose and unwarranted construction, which would pervert the meaning of words and invalidate the limitations of the constitution must be avoided, a rational but liberal construction should be adopted.

## SECTION X.

## TAXES.

The first words of the eighth section of the first article of the constitution, which section enumerates the powers of Congress, are: "To lay and collect taxes, duties, imports, and excises." This means that Congress may lay all manner of taxes. The most general division of taxes is into *direct* taxes, and *indirect* taxes. A direct tax is taken immediately from income or property. It includes a capitation tax, or, as it is more commonly called, a poll-tax, and an income tax. An indirect tax makes the owners of the articles on which it is laid, pay the tax, without reference to any thing but the value or quantity of the article. When these taxes are laid on exported or imported goods, they are called *duties*, or customs-duties; and are regulated by a *tariff*. An indirect tax may also be laid upon those who exercise certain trades or occupations, and it is then called a *license*. If it is laid upon certain wares or products, as tobacco, spirits, beer, and the like, it is an *excise*.

All these taxes Congress may lay, and at different times have laid. Certain general principles have been deduced from the long and wide experience of nations, as those which should govern all taxation. They may be stated thus, on high authority.

1. The subjects or citizens of every State ought to contribute towards the support of the government, as nearly as possible in proportion to their respective abilities.

2. The tax which each individual is bound to pay, ought to be certain and not arbitrary. The amount, the time, and the manner of payment, ought all to be clear and certain to the contributor and to everybody.

3. Every tax ought to be levied at the time and in the manner in which it is most likely to be convenient for the contributor.

The second section of the first article provides that "representatives and direct taxes shall be apportioned among the several States according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, *three-fifths of all other persons*." "All other persons" meant slaves, a word nowhere appearing in the constitution. This provision was perhaps as wise and fair a compromise of existing views and claims, as could then be made. To say that they were persons as much as other persons, would have required that they should all be counted in among those to be represented. This was

not fair, as they did not vote, and such a rule would have added to the political powers of the whites, merely because men who could not vote were mingled with them. But if they were not counted at all, this seemed unfair, because after all they were persons as well as property. So the compromise was made. The States which had few or no slaves being contented that the States which had many slaves should have more than the share of political power which belonged to their number of voters, because an equal excess of taxation was cast upon them. The reason that bargain was satisfactory to the non-slaveholding States was, that at that time it was believed that the revenue of the country would mainly, if not wholly, arise from direct taxes. This was an enormous mistake. But it would be unreasonable to charge the men of that day with lack of wisdom, because they did not anticipate the growth of our commerce and of our national resources. Congress has, at different times, and in great emergencies, as in war, imposed direct taxes. But it took them off as soon as possible; and nearly all the national revenue has been and is now raised by indirect taxes, and principally customs duties.

In laying these duties the great question has been, is now, and is likely to be for ages to come, Shall these duties be laid for revenue, or for the protection and promotion of domestic manufactures? That the duties may be laid for protection is nowhere expressly enacted in the constitution; but the whole clause respecting duties is this: "to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." It has been very much disputed as to what is the effect of the last part of this clause. What may be termed a simple and common-sense view of this question would be, that this power to impose taxes is given for the purpose of paying the debts of the nation and also providing for its general welfare.

Instructive evidence as to how it was understood at or very near the time of the adoption of the constitution, may be found in the preamble of the second act passed by Congress, which was enacted in 1789. It runs thus: "Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and *the encouragement and protection of manufactures*, that duties be laid on goods, wares, and merchandise imported, — Be it enacted," &c. It would seem too late to lay much stress upon the question whether Congress, in laying duties, could pay whatever it deemed a due regard to the encouragement of domestic manufactures. Whether they should do so, and what this due regard would be, must be argued on expediency and equal justice to all the parts and all the interests of the country.



The main arguments of those who object to any special regard to protection, may be said to be these. Manufactures must to a considerable extent be localized; in one region cotton goods will be made; in another manufactures of iron will prevail. Climate, cost and supply of labor, natural facilities of various kinds, will operate; and the necessary effect will be that the people of one region will be the principal manufacturers of one or another kind of goods, while the people of another region are mainly employed in manufacturing some other kind of goods, or in producing food, or articles for export. Hence any laws which operate exclusively in favor of a certain class of manufacturers are partial, and therefore unjust. Moreover, taking the whole country together, such laws necessarily produce a loss instead of a gain. Any interference with the natural course of trade or business of any kind must be mischievous, for the plain reason that this natural course of "let alone" is sure to result in the people of every region, and, indeed, of every country, engaging themselves in the work which, upon the whole, they can do best; and this work will be at once most profitable for them, and most useful to all. If the labor or enterprise of any part of the people is diverted from this natural course, the large gains made by a few will seem to indicate a general prosperity; while, in fact, these gains will be made at an exactly equal loss, divided among a far greater number.

For example, a plough, or so many axes or shovels, made in England, where labor is very cheap, may be bought there, and, if there be no duty, imported and sold here for, we will suppose, five dollars. They cannot be made and sold here, where labor is dear, for less than six dollars. Let a duty of forty per cent. be laid, and the English goods, which would cost here five dollars, will now cost forty per cent, or two dollars, more, which will bring them to seven dollars. But the manufacturers can make them and sell them for six dollars. If they sell them for that price, or even for six and a half dollars, the importation must cease, and the manufacturers make great profits, and all the people in the land who use ploughs, axes, or shovels must pay this extra dollar or two, and a part of it goes to make up the profit of the manufacturer. The same reasoning applies to the manufacture of articles of clothing, or other goods of general use, if the importation of cheaper goods is prevented or checked, and dear goods made at home substituted for cheaper goods made abroad.

The answer to all this, made by those who are in favor of protection to domestic industry, is substantially this. The doctrine of free trade and free manufactures might work well for all if all nations practised it. But, in fact, other nations do not. There is not a

country in Christendom that has not laid more or less restriction upon traffic, for the encouragement of its own productions; and we must do the like, in self-defence, if we would not fall behind other countries. Moreover, there is a fallacy in supposing that a duty upon manufactured goods always increases the price of them in proportion. At the beginning it may have much effect in that direction. But soon there comes competition. Ingenuity is taxed to improve machinery and overcome the advantage they have abroad in cheap labor; and hence it is that all our manufacturing machines and processes are in a condition of continual improvement. Large amounts of capital are thrown into the business, so as to secure the advantage of buying materials when and where they are cheapest, and of making them up at the least possible cost. The effect of all this is, that prices, instead of being advanced, are, it is said, lessened, and manufactured goods of general necessity and use are bought in this country for less than they cost before duties were laid on them. Not only so, but we are able to export largely at a fair profit; and what proves that we have taken our place as a manufacturing nation, and can manufacture our goods as cheaply as other nations, is, that we send our manufactures, especially of cotton and iron, to foreign markets, and can sell these goods for a less price than even English goods of the same quality are sold for. Moreover, immense amounts of labor are employed, at good wages; and those who are thus withdrawn from the general labor market make its value greater everywhere, and the whole labor of the country is better paid.

Most of all, and as the greatest advantage of all, an immense home market is opened for home produce. If the great army of workers now employed in manufactures were added to those now employed in agriculture, there would be a great over-production of farm and field produce, and the glut in the home market would, on the one hand, lessen the production of meat and bread, and, on the other hand, would send the surplus abroad at low prices; that is to say, the loss of our home market would make farming far less profitable, and would arrest the rapid growth of our interior. Because it is the protection heretofore given to manufacturing industry that has caused the universal prosperity of the country, by supplying all who produce food with clothing and other necessities at fair prices, while it secures to them fair prices for the food they produce.

Such are the arguments on the one side and the other. Perhaps there is now a very general assent to what may be regarded as a fair compromise between these extremes. It is, that all duties on imported goods should be laid, in the first place, for revenue, and should never be greater than the revenue requires. But, in the second place, they should be adjusted (so far as revenue purposes

permit) in such a way as to give the greatest encouragement and assistance to domestic industries, the great difficulty still being, and likely to be hereafter, in making this adjustment; the free-trade party wishing it made so as to obstruct commerce in favor of home manufacture as little as possible, and the protectionists asking that enough regard should be paid to domestic manufacture to prevent the destruction of existing industries, and to continue in force a system which has, in their judgment, immensely promoted our national prosperity.

We have seen, by a reference to the second act which Congress ever passed, that at the beginning of our government there was a disposition to encourage domestic manufactures. It may be said that this has, on the whole, prevailed to the present day, although with much fluctuation; the principles of free trade being at one time prevalent, and then those of protection coming into the ascendant. As the subject is of great importance and of universal interest, we give our readers a brief statement, gathered from the latest sources of information, of the present condition of our principal industries:—

**IRON.** — The greatest industry of all is that of iron, which has reached immense proportions, especially in Pennsylvania, Ohio, New York, and Michigan. There are iron establishments in every State of the Union, with the solitary exception of Florida, and in every territory except Utah. About \$200,000,000 of capital are employed, and the products reach \$325,000,000. The manufacture of iron gives work to 140,000 hands. Pennsylvania is altogether at the head in this industry, her factories numbering very nearly 1,000, and her products being not far from \$122,000,000. But the most wonderful feature of iron manufacture is its spread westward. Michigan, Indiana, Illinois, and Ohio have between them about 860 establishments; while in the Far West—in Minnesota, Iowa, Wisconsin, and even in California and Nevada—they are becoming numerous, and important. The progress of iron manufacture during the past twenty years may be estimated by the fact that while in 1870 the factories numbered 3,701, and had a capital of \$200,000,000, in 1890 there were only 2,364, with a capital of about \$46,000,000.

**COTTON GOODS.** — Of cotton factories there are 819, distributed through a large number of States, but mainly in Massachusetts, Pennsylvania, and Rhode Island (which small State has no less than 140), with an aggregate capital of \$133,000,000, a force of 130,000 hands, and products of the value of \$168,000,000 yearly. These are exclusive of manufactories of cotton, batting and wadding, of which there are 27, with a capital of \$276,000, and of cotton thread, twine, and yarns, of which there are 123, with a capital of \$7,400,000, and an annual product of \$8,700,000. It is worthy of remark that within the past twenty years cotton mills have spread with considerable rapidity through the South, and are to be found not only in

the upper tier of those States, — North Carolina, Virginia, Tennessee, — but even in Alabama, where there are ten; Georgia, where there are twenty-five; Louisiana, and Texas. It is highly probable that cotton manufactures are destined to multiply in the South, on the very field where the raw material is grown, — a promise which opens new prospects of prosperity for that section, and of cheaper goods for the whole country.

**WOOLLEN GOODS.** — There are in this country nearly 2,000 woollen factories, principally in the States of Pennsylvania, Massachusetts, New York, Ohio, Indiana, and Connecticut, with an aggregate capital of nearly \$100,000,000, employing 77,000 hands, and producing \$150,000,000 worth of goods. These factories do not include wool-carding and cloth-dressing establishments, of which there are about 1,000.

**WORSTED GOODS.** — This industry has almost wholly grown up within the past thirteen years. In 1860 there were but three worsted factories in the country, two of which were in Massachusetts, and one in New Hampshire; in 1870 there were over one hundred, Pennsylvania having thirty-one, Rhode Island eleven, and Massachusetts thirty-five; and the aggregate capital employed being some \$10,000,000, giving a product of more than \$22,000,000 annually.

**CARPETS.** — In the manufacture of carpets there are 250 factories, with \$13,000,000 of capital, and \$22,000,000 of annual production, — Pennsylvania almost monopolizing this industry, as she has nearly 200 of these factories, and produces about \$10,000,000 annually.

**SILK GOODS.** — There are 90 silk factories in the United States, employing about 7,000 hands, with a capital of \$6,500,000, and an annual product of more than \$12,000,000. This includes silk goods, ribbons, machine and spool silk, and silk thread. New Jersey is the leading State in this industry, having thirty factories to twenty-three in Connecticut, fourteen in New York, and ten in Pennsylvania.

**CUTLERY GOODS.** — As yet there are only about 182 cutlery establishments, with an aggregate capital of \$4,000,000, and an annual production of \$5,500,000. But this industry has perceptibly grown, and is still growing, — Connecticut, New York, and Pennsylvania, being the leading States in this enterprise. There are but four cutlery establishments in the South, three of which are in Missouri, and one in Louisiana.

**BOOTS AND SHOES.** — This manufacture is one of the very largest and most important in the country, there being more than 3,000 factories, of which more than 1,000 are centred in Massachusetts, the next highest State being New York, with something over 300. In this manufacture about \$40,000,000 of capital are employed, with a product of not far from \$150,000,000. The West is looking up in this industry, for there is a large number of factories in successful operation in Missouri, Wisconsin, Illinois, and Iowa. At least 100,000 hands are employed in the making of boots and shoes.

**WINE.** — One of the most interesting of comparatively recent industries is the growth of grapes and the manufacture of wine. Some of the Ohio, Missouri, Virginia, and Californian valleys are found to be well adapted to the growth of vineyards; and there are now over 400 wine-making establishments in the country, producing champagnes, hocks, ports, sherries, and sweet dessert wines. Of these Missouri has about 200, employing a capital of \$700,000, and producing about \$1,000,000 annually; California has 150; Ohio, 40; New York, 10; and Illinois, 5. The total of the various kinds produced is about \$2,500,000.

**MALT LIQUORS.** — These are made in something over 2,000 breweries, which are spread completely over the territory of the Union; the largest number being in New York, Pennsylvania, Ohio, Wisconsin, Michigan, Illinois, Iowa, Indiana, and Missouri, — States, let it be observed, where the German element of the population is most thickly gathered.

**AGRICULTURAL IMPLEMENTS.** — The capital employed in the manufacture of agricultural implements has increased, in twenty years, from \$3,500,000 to \$35,000,000, and the products from \$7,000,000 to \$52,000,000. Since 1860 this industry has somewhat more than doubled.

**INCREASE OF MANUFACTURES.** — The value of manufactures — in which are included fisheries, quarrying, and mining — increased in the ten years between 1860 and 1870, 108 per cent, this estimate being the actual increase, after deducting the enhancement of prices by the issue of paper currency. The nominal increase was from nearly \$2,000,000,000 in 1860 to \$4,002,000,000 in 1870. That is to say, that the United States produced over twice as much manufactured goods, in money value, five years after the close of the war as they did in the year before the war broke out. The total number of manufacturing establishments in the country, which in 1860 were 140,433, were, in 1870, 252,148. The States which rank highest as manufacturing centres are in the following order: Pennsylvania, which has 37,200; New York, which has 36,206; Ohio, which has 22,773; Massachusetts, which has 13,212; Illinois, which has 12,597; Indiana, which has 11,847; Missouri, which has 11,871; and Michigan, which has 9,455. The industrial empire will be seen to be taking its way westward. And this is a comparatively recent movement; for while Massachusetts, twenty years ago, had about 9,000 establishments, Illinois, which has now nearly caught up with her (as above), only had 3,000; Indiana, only 4,000; and Michigan, only 2,000. In twenty years Michigan has increased her manufactures fivefold, Illinois more than fourfold, and Missouri fivefold, while Massachusetts has only increased hers one-third.

## SECTION XI.

## ON THE JUDICIARY.

In preceding chapters we have considered the executive power and the legislative power. We have now to treat of the judicial power.

Our national constitution is, as has been said, a new thing upon the earth, in many respects; in no one more important or more remarkable than in the distinction it makes between the three great essential powers of all government. It clearly defines each of them. It separates one from the other, making them independent of each other, and yet establishing between them an indissoluble connection by unity of service and accordance of action, so that they work together, each in its own way, but all concurring in the preservation of our national rights and national existence, and of the personal and property rights of every individual in the nation. One body carries the law into effect; another body makes it; a third body determines what is law, and construes and applies the law, and keeps the other two from wandering outside the path of power and of duty assigned to them.

This distinction between the executive, the legislative, and the judicial functions, grew up in England, in some slight degree, but from no definite design. Our fathers recognized it, and carefully provided for it, as the surest safeguard of political rights; for the obvious reason that if the executive can make what laws he will, or construe and apply them as he will, there is an obvious despotism; and if any other body in the States can unite these functions, that body becomes a despotic executive. Of these bodies, nothing is now more universally admitted than that it is the function of the judiciary to judge and decide whether a law be constitutional, and in that case valid, or unconstitutional, and therefore of no force whatever; and that it is not merely their certain right, but as certainly their duty, to do so, when the question is properly before them.

This function of the judicial power was wholly unknown before; for how could a judiciary be charged with the construction and preservation of a constitution, before such a thing as a written constitution existed? No wonder that our fathers scarcely knew how great a thing they had done in taking this step. No wonder that our judicial bodies themselves did not, in the first years of our national existence, know certainly that this important power was entrusted to them, or see clearly their duty in relation to it. To prove this, let me say that in 1792 a pension law was passed,

requiring the judges of the Circuit Courts of the United States to carry the same into effect. The question soon came before many of these courts, whether this act was constitutional; and they all decided at once that it was unconstitutional, because it imposed upon judges duties which certainly were not judicial. But the judges for the district of New York, — Jay, Cushing, and Duane, — while clear that the law was unconstitutional, held that “from their desire to manifest their high respect for the national legislature,” they would consider that the law had only appointed as commissioners the persons who happened then to be judges, inadvertently describing them by their *official* names instead of their *personal* names; and accordingly they undertook the duties of commissioners. The court for the district of Pennsylvania (Wilson, Blair, and Peters), and that for North Carolina (Iredell and Sitgreaves), went so much further as to refuse to proceed under the act; but each court wrote a long letter to the President, apologizing, almost humbly, for their decision, the Pennsylvania court calling it “a painful occasion,” and the North Carolina court speaking of the “lameptable difference of opinion.” And so things went on until 1803, when, in Marbury’s case, so called, Chief Justice Marshall considered the question in all its bearings; and, with a force and clearness which I cannot characterize otherwise than by calling them most admirable, settled the question, as I hope, for all time. What he considered this power of the judicial body can best be told in his own emphatic conclusion: “This is of the very essence of judicial duty.”

Very far are we, however, from understanding now the exact limitations of judicial duty in this respect; or, in general, the nature and force of what Jeremy Bentham called “judge-made law.” It may well be hoped that as the nation grows older it will grow wiser, and that some questions will hereafter be settled to which no certain answer can now be made. But already, I think, there are three rules on this subject which may be considered as established.

One, that the court cannot judicially inquire into any law, unless it be directly involved in some case properly brought before them by the parties in interest. (I have nothing to say here of instances in which a State constitution authorizes the executive or legislature to ask the opinion of the judges.)

Secondly, if they consider any law or rule or principle, which is not so involved in the case before them that their consideration of it is necessary for their judgment, they go just so far beyond their judicial duty, and can utter no word of judicial power. They may make essays, or utter apothegms of much interest and value as the sayings of wise men; but what they say is not *judicial* any

further than it is distinctly involved in their *judgment*, and therefore it is not authoritative. It may be a *saying* (dictum), but it is not a *decision*.

Thirdly, whatever they adjudge and determine within these limits may be reversed or qualified by the same judges or their successors, or by the legislature if the constitution permits, but, until so reversed or qualified, it has the force of law.

Not only from remarks made where we might expect party feelings would obscure judgment, but from words sometimes uttered in high places, we have too much reason to fear that the great duty of the judiciary as the expounder and defender of the constitution is not so clearly seen, or so unreservedly acknowledged, as from its vast importance it ought to be.

Our government is established and determined by the constitution. This the people made, in the exercise of their sovereign will. And the one certain thing about it is, that it is a government of limited powers. Not only is the whole government limited, but every department of it is limited within clearly defined boundaries. It is absurd to say that the constitution can remain in force, or the government continue to be what the constitution makes it, if any one of its departments may at its own pleasure transcend the limits imposed upon it.

The constitution is the law of the law. If Congress pass a bill of attainder, under which a citizen may be deprived of life or property without trial; or, if Congress pass a law that on a trial for treason the defendant may be convicted on the evidence of one witness when the constitution requires two, — how can the accused obtain relief, or, what is far more important, how can the constitution itself obtain relief and an adequate defence against this invasion, except by the interference of that body whose function it is to construe and apply all law. That body, the judiciary, will look to the constitution for direction what to do. They read there that Congress has not the power to pass a bill of attainder. Must they not say at once that this bill of attainder was not passed by competent authority, and therefore is not law? The judiciary must have, can have, no guide but the law. But the constitution is the supreme law of the land; it is the law of the law. By the very terms of their constitution (sixth article), the people declare that the constitution is the supreme law, and then *laws made in pursuance of the constitution* are valid.

Only these laws are laws. The judiciary have no more right to regard as a law one *not* made in pursuance of the constitution, than they would have to regard as law an order sent to them by the President, or by the general in command of the army. And who



are to determine whether the supposed laws be made in pursuance of the constitution? Certainly not the President; for, if we give him this power, he becomes an irresponsible despot. Certainly not Congress; for it is they who made the law. Obviously it must be the judiciary; for there is no other body which can do it for them: and to construe a law, and apply it to the case before them, is precisely what they were appointed to do. And how can it be said that it is their business to examine into a law, and declare its meaning and force, but they must not examine into the question whether it be a law at all?

**Wisely has the constitution deposited this power in the hands of the judiciary.** First, because this power cannot make them despotic or tyrannical, inasmuch as they have no power to make law, or to execute law. Their power in this matter is only negative. They can say that such a law is a law only in form and appearance; but is not a law in fact and in force. But they cannot say, That law which Congress made is not a law; but this is law which we make, instead of the law that Congress made. They cannot make void that law because they do not like it; they can only say that it is void, because not made in pursuance of the constitution.

**Secondly, because the judiciary consists of a body of men selected for their knowledge of law, trained to understand the law, and separated from all other business in life that they might devote themselves to this one work without a divided mind, and undisturbed by other pursuits and interests.** For so, at least, they ought to be selected, and ought to live.

**It was said at Washington, on a recent interesting and exciting occasion, "Why should Congress yield such deference to the opinion of those men, sitting as a court? There are amongst us, and in either House, as good lawyers as sit upon that bench. Why may not they be trusted?"** But all the members of Congress are not lawyers; and it is well they are not, for all interests and all modes and forms of opinion and judgment should be represented there, and have due influence there. And all the lawyers there are not sound and learned lawyers, for they were not selected by any such standard, or for such reasons exclusively. But the justices of the Supreme Court were so selected; on no other grounds in theory, and on these grounds mainly in practice. And being so selected, constantly busied in the work of expounding and applying law, sequestered mainly, if not altogether, from other pursuits, and unable to forget, even if they would, the great duties which are always before them, how can it be doubted that we have here a body of men, so selected, organized, and employed as to develop to the utmost their fitness for the great duty of expounding, protecting, and pre-

serving the constitution; and secured, as far as men can be, from the influences most likely to distract and impair their discharge of that duty?

Therefore it is that the constitution most wisely makes the judiciary independent. In all other governments the judicial power is but a part of the exercise of the executive power. Once, the king sat in the gate of his court-yard, and administered justice to all who came. That was a long time ago. But at this day the personal sovereign, wherever there is one, appoints the judges; and they are his ministers, and he does justice through them. Here, our sovereign, the people, through their servants, selects them, and then they are amenable to the people alone; being just as independent of the executive and legislative bodies, as these bodies are of the judiciary.

Our constitution, and our system of government under the constitution, may be compared to an arch, so skilfully, so well adjusted in all its parts, that it is idle to call one of its members more essential to its existence and its strength than another. But if to any of the stones which compose it we would give the name of Keystone, we must give it to the judiciary. Whatever strengthens that stone strengthens the whole; whatever weakens it weakens the whole; take it away, and the whole would fall into ruin.

There are but two ways which we can think of by which its functions could be made still more useful, and by which it could be still better protected from harmful influences. One would be this: to introduce a principle known to some of the States,—in Massachusetts, for example, it has worked excellently,—by which the President, or either body of Congress, might call for the judgment of the court upon the constitutionality of any proposed measure. Instances have already occurred in our history in which such a practice might have been eminently useful.

The other is this. Provide, by an amendment of the constitution, if that be necessary, that a person appointed a justice of the Supreme Court, and accepting that office, should be thereafter unable to hold any other office in that court or elsewhere, either by the appointment of the executive or by an election of the people. Already there is assigned to that office a competent salary and a retiring pension, which may relieve the holder from pecuniary anxiety. Let them be increased, if need be, that the emolument may co-operate with the honor of the place to call the ablest men in the country into the service of the country. Then let the rule above stated be established, and the strongest, perhaps the last, temptation to yield to the corrupting influence of political ambition would be taken away.

SECTION XII.  
OF IMPEACHMENT.

Before treating of Congress, as composed of the two Houses acting concurrently, the subject of impeachment may be considered; for in this both Houses act indeed, but in totally different ways.

The House of Representatives alone has the power of impeachment. Acting as the grand inquest of the nation, it finds articles of impeachment, which are substantially an indictment; and, by a committee, presents them to the Senate, which alone can try the case.

The whole system is imitated, and on some important points closely imitated, from the practice of England. The framers of the constitution found it a very difficult matter to deal with aright. They were much divided in opinion about it; and all knew that any system they could adopt would be open to objections; and they finally concluded on copying the English practice, so far as this approved itself to their judgment, as on the whole adapted to the purpose.

Many preferred that the Supreme Judicial Court should try such cases. But to this it was objected that one or more of their own number might be the subject of impeachment, and that all of them had been appointed by a President, and some of them, perhaps, by the President who was himself impeached. Then, great difficulties were found in giving this function to a special court created for the purpose. And, on the whole, the Senate was selected. Experience has thus far confirmed the wisdom of the choice.

The Chief Justice of the Supreme Court presides. The articles are presented and the trial conducted on the part of the House by managers chosen from among the members. The accused is defended by counsel; and the trial proceeds and evidence is offered on the one side and the other, according to the rules of the common law and the practice of courts and parliamentary usage. At the close of the evidence and arguments, each senator is called upon to say whether the defendant "is guilty or not guilty of a high crime and misdemeanor, as charged in the first article of impeachment." And the same question is put to each senator as to each article. Two-thirds of the Senate must answer that he is guilty upon some one or other of the articles, or the defendant is entitled to an acquittal.

If he is convicted upon all or upon any one or more of the articles, the Senate then proceeds to declare the proper punishment. There are two clauses in the constitution which relate to the punishment of one found guilty under an impeachment. One provides that the

guilty party "shall be removed from office." The other provides that the judgment "shall not extend further than a removal from office, and a disqualification to hold any office of honor, trust, or profit under the United States." The settled construction of these clauses appears to be that the guilty party *must* be removed from office, and *may* be disqualified from holding office in future, if the Senate in its discretion thinks proper to inflict this additional punishment. The constitution both wisely and mercifully affixes these limits to this judgment. In England, political offenders, when impeached by the commons and found guilty by the Lords, have been sentenced to death by them. But the framers of the constitution regarded impeachment as mainly, if not altogether, a method of securing the community against the continuance in office, or the return to office, of bad men.

Hence the clause in the constitution which limits the punishment to be inflicted by the Senate closes with this provision: "But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Thus, if a President were impeached for treason, found guilty, and removed from office, he might afterwards be indicted in a court of law, capitally convicted, and put to death.

#### WHO MAY BE IMPEACHED.

Some question has been made of this. The fourth section of the second article says: "The President, Vice-President, and all civil officers of the United States, shall," &c. Not all *other* civil officers, but *all* civil officers. The best construction, and that generally admitted, is, all officers of the United States appointed under the national government, whether executive or judicial, and in high or low office, are subject to impeachment. The only apparent exception to this is in the case of the Senate. It seems to be settled that no senator is subject to impeachment. Various reasons are given for this. It is enough to say that the Senate might expel a member by a two-thirds vote, and could do no more if impeached and found guilty, except to add, if they saw fit, the further punishment of disqualification for office. It has been said, but not determined, that, by a similar exception, a member of the House of Representatives cannot be impeached. This exception may rest on the power of expulsion which the House possesses, and also, both in respect to the Senate and the House, on the distinction that they are not "civil officers of the United States," inasmuch as they hold office from the people of the States, and not from or under the national government.

## FOR WHAT OFFENCES AN OFFICER MAY BE IMPEACHED.

The constitution says: "treason, bribery, or other high crimes and misdemeanors." This phrase, "high crimes and misdemeanors," is a technical legal phrase, and may be said to be sufficiently defined by the common law. Congress might undoubtedly define it by law, but has never done so. An impeachment by the House, and a reception and trial of the impeachment by the Senate, would be, in another form, a declaration of the views of Congress in that particular case, and might have the force of a precedent, but not of a law.

The offence charged must be not an offence only, but a high crime and misdemeanor. What this is must be left for the House as accusers, and the Senate as triers, to determine. If they make a mistake, there seems no way to rectify it; for the case of impeachment is expressly excepted from the President's power of pardon. It cannot be doubted that the purpose of this great and exceptional power was to remove bad men from important offices, where they might do much harm. And there is little reason to fear that it will be prostituted to punish lesser or meaner wrong-doing.

## SECTION XIII.

## THE WAR POWER.

Congress has power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water."

The power to declare war obviously belongs of necessity to national sovereignty. There was much discussion among the framers of the constitution as to where this power should be lodged. In monarchical nations it belongs to the monarch alone; and there were some who thought the President with the Senate should have the power. But it was wisely concluded to give that power only to Congress.

Congress may declare war generally, as it did in 1812, when it was enacted, in the manner in which all laws are passed, that "war be and hereby is declared to exist between the United Kingdom of Great Britain and the dependencies thereof, and the United States of America and their territories." But Congress may also declare what may be called a qualified, partial, or imperfect war, as it did in the year 1798 with the kingdom of France; and divers laws were enacted concerning the same.

The issuing of letters of marque means the giving authority to parties injured by a foreign nation to seize the property or the per-

sons of subjects of the State which did the injury, until satisfaction be received. Such authority was formerly given to the owners of private ships who had sustained injury from a foreign nation; and it authorized them to take prizes by way of indemnity. These were called special letters of marque and reprisal. Now, however, letters of marque issue only in time of war. They are a commission from the President to owners of private ships to make what prizes they can, and where they can.

This business of privateering is now carried on by all nations in time of war. But of late years there have been many strong efforts to abolish it, and to put private property on the sea on the same footing with private property on land, which the law of nations protects from destruction or injury, and especially from capture, unless these are necessary for purposes of war. Hitherto these efforts have been ineffectual; but it may be hoped that in time, as nations grow more civilized and international law becomes wiser and more humane, these efforts will be successful.

As Congress may declare war, so it has power "to raise and support armies;" but to this power is added a provision, which is a most important check upon the abuse of this power: "but no appropriation of money to that use shall be for a longer term than two years."

Under the general authority given to Congress to pass laws necessary and proper for carrying the provisions of the constitution into effect, Congress has passed many laws regulating prizes, and other matters of like kind. In general, a captured vessel must be brought into one of our own ports, and proceedings commenced before a court of competent jurisdiction, which is nearly always a Court of Admiralty. If the vessel is adjudged to have been unlawfully captured, she is surrendered to her owners. If lawfully captured, she is declared to be and is condemned as a prize. Ship and cargo are then sold, and the money divided among the captors as the laws of Congress direct.

#### ARTICLES OF WAR.

These are statutes passed from time to time by Congress regulating with considerable minuteness all military affairs. Every officer in the army is required to subscribe to them before he enters upon his duties; this subscription signifying not only an acknowledgment of notice, but a promise to obey them.

These articles are more than a hundred in number. They prohibit embezzlement of public property, cowardice before the enemy; drunkenness, oaths, and profanity; offering violence or disrespect in

any way to a superior officer, absence from parade, aiding the enemy or corresponding with him, making known watchwords, duelling, and improper behavior at public worship, and sundry other offences against military good conduct. They provide rules for enlistment, discharging and granting furloughs to the men; for courts-martial, and for the disposal of the property of deceased soldiers; and they prescribe the punishments for various offences. The articles of war must be read publicly at least once in every six months to every regiment and troop in the army.

#### MILITARY ACADEMY.

In 1802 an act of Congress founded this academy, and placed it at West Point, on the western side of the Hudson River, about fifty miles from the city of New York. Begun on a small scale, and for some years lingering in comparative obscurity, after a while it attracted the attention of the people and of Congress, and has gradually grown into one of the very best organized and most efficient of the educational institutions of the country. For its own particular purpose, which is the training of young men to become officers in the army, it has, of course, no competitor in this country. It has proved its usefulness in this respect by the excellent officers whom it has educated. But the education which it gives is complete and thorough; and many of its graduates have left the military service, and become eminent and useful in various occupations in civil life.

Every State is entitled to send as many students as it has senators and representatives in Congress, and every Territory, and the District of Columbia, may send one. Usually the representatives nominate the students, and the President appoints them. Of late a custom has been introduced, whereby a representative, when his turn to nominate comes, calls together a board of competent examiners, and submits all who offer themselves as candidates to a competitive examination, and gives to the President the name of him who is most approved by the board. There may be exceptional cases, where the representative would do well to nominate without reference to such a board. But the custom is a good one, and it may be hoped that it will become universal. In addition to those appointed from the congressional districts, the President appoints ten at large, or from where he will.

#### THE NAVAL ACADEMY

Is now established in Annapolis, in Maryland. Its purpose is to educate students to become officers in the navy. The education

of the pupils is thorough, but of course is especially directed to accomplish the special purpose of the school. Still this school, like the army school, has sent out into civil life men who have distinguished themselves in various ways. The appointment to students in this academy is, like that of the military school, founded mainly on the congressional districts.

The students in both of these schools are entirely supported by the government. The examinations are frequent, and, without being too severe, are real; and no one can graduate without industry and fidelity to duty. Still, the number of students in both schools is usually in excess of the demands of the army and navy; and hence it is that the benefits of the excellent education they give are not confined to them, but are diffused through the country.

#### WARS OF THIS COUNTRY.

The war of Independence cannot be called a war of this nation, but rather a war by which we became a nation. Beginning with the first blood shed, on the 19th of April, 1775, it continued eight years, when it was terminated by the cessation of hostilities, proclaimed 19th of April, 1783, and the treaty of peace and independence, signed the 3d of September following.

We may call the difficulty with France, which occurred some twelve or fifteen years after our peace with England, an imperfect war. France counted too much on our sympathy and active support in her contest with England. She had helped us, and wanted us to help her; and there were so many in this country who desired to gratify the wishes of France, that it required the whole influence of Washington, aided by our wisest and strongest men, to avert a war with England. Then France was angry, and assumed an offensive, not to say hostile, attitude; and now it needed all that our best and wisest men could do to prevent a war with that country. France authorized the capture of American vessels under certain circumstances; we, in return, authorized the capture of French vessels, and there were some conflicts on the ocean. But finally the war-cloud was dispersed, and war was averted.

#### THE SECOND WAR.

This, again, might seem hardly to deserve so large a name. But Tripoli, Morocco, and Algiers claimed the right of exacting tribute from all who navigated the Mediterranean Sea. Other nations submitted to it. Our government would not. They took some of our merchant ships, and imprisoned the seamen. In 1801 the Pacha



of Tripoli declared war against us. We sent a navy into the Mediterranean, under command of Commodore Preble, and succeeded in putting a stop to these piracies, so far, at least, as concerned us.

#### THE THIRD WAR.

This was a war with England. Many causes of mutual offence and hostility had been operating upon both nations for some years. At length, in 1812, war was declared. The immediate and ostensible cause was a claim on the part of the British government to stop our ships, whether private or public, board and search them, and take out seamen who had deserted from their vessels, and, being subjects of the British government, had emigrated to this country. This claim that government enforced in many instances, some of which were attended with peculiarly offensive circumstances. Our government denied this right, claiming that our flag protected those who sailed under it. So we went to war, which lasted until the 24th of December, 1814, when a treaty of peace was signed at Ghent, in Germany, where our commissioners had met the British commissioners. Had there been an ocean telegraph in those days, it would have prevented the bloody battle of New Orleans, in which, on the 8th of January, 1815, Jackson defeated the English. Some naval battles were fought afterwards by ships which had not heard of the peace. The remarkable thing about the treaty of peace was, that it included a settlement of none of the great questions on which we had gone to war. It was, nominally, just a peace between nations who were weary of fighting. But, in fact, the war itself had determined these questions in our favor; for England has never since enforced or advanced the right to search our vessels for her seamen and subjects, and, it may safely be asserted, never will.

#### THE FOURTH WAR.

This was a war with Mexico. The Mexican State of Texas revolted from Mexico. We helped Texas, and it established its independence. Then it called upon our government to protect it against Mexico. This our government was very willing to do, and sent an army into the western part of the Territory of Texas, nominally to protect it from invasion. There a battle was fought on the 26th of April, 1846. Other battles followed; and on the 12th of May Congress passed an act, not declaring war, but declaring that war actually existed between this country and Mexico, and asserting, in substance, that the war had been brought on by Mex-

ico ; and on the next day President Polk issued his proclamation of war.

In March, 1847, General Scott took command, and overran Mexico, capturing her chief cities, and among them the capital. The whole country was in our power, and virtually in our possession. Peace was made by a treaty on the 2d of February, 1848, by which we retained, as a part of our country, New Mexico and California. Texas had already been admitted as a State in 1845. This war was honorable to our arms. But whether this attack upon a feeble neighbor, and taking from her nearly half of her territory, was honorable to our country and to our government, may be questioned. But to this war we owe the possession of California, the peculiar value of which territory was then unknown.

#### THE FIFTH WAR.

This war is still in everybody's recollection. It was the war between the United States of America and the Confederate States. It began by the attack on Fort Sumter, in the harbor of Charleston, on the 12th of April, 1861, and continued for four years, when, on the 8th of April, 1865, Lee surrendered to Grant. There was no declaration of war, no treaty of peace. It was a CIVIL WAR. It was fought only between parties and regions of the same country. And yet it was the greatest war ever waged on earth, whether we measure it by the extent of country over which it reached, or by its enormous expenditure of treasure and of life ; for nearly a million of lives were lost and ten thousand millions of dollars expended. It was a war between the States which permitted slavery and those which did not. It resulted in the extinction of slavery throughout the country ; and at this day, in every part of the land, there is no difference in law between the white race and the black race.

#### SECTION XIV.

##### POWER TO BORROW MONEY.

Congress has power "to borrow money on the credit of the United States." As the world now goes, it was perhaps necessary that Congress should have this power, and perhaps necessary that Congress should exercise this power. But the whole business of running in debt, whether for a man or a nation, is a dangerous thing. National indebtedness was unknown in ancient times ; and only within a century or two has it grown into its present enormous

magnitude. England set the example; and its national debt seemed a century ago to cautious men an intolerable burden, when it was hardly more than the interest which is now paid annually. The present debt of that country is now but little less than four thousand millions of dollars; and some of their wisest men have said that the idea of ever paying it is, in fact, abandoned, nothing being hoped or attempted but such a continuation of the prosperity of the country as shall enable it to sustain the taxation necessary to pay the interest. Even that has become of late years problematical. If the commerce and manufactures of those islands should receive any material check, the necessary taxation would become intolerable, and would no longer be borne. Disguise it in whatever ways may be devised, the taxation to pay the interest of a national debt is just so much contributed by the wages of labor and the profits of business, and the food drawn from the land.

**How is it in our own country? We have always maintained** not only the purpose, but the effort, to pay it off. In the years 1835 and 1836 our national debt was paid in full (excepting a trifling amount, which for special reasons remained some time longer unpaid); but it began to grow again, and not very slowly. The late war caused an enormous increase of the debt,—from \$88,498,000 to \$2,757,253,000. But to the honor of our country be it said, that, on the return of peace, measures were at once adopted not merely to pay the interest, but gradually, and not very slowly, to pay the principal. It has already been reduced from the sum last mentioned, which was the amount of the debt on the 1st of July, 1865, and the highest amount reached during the war, to \$2,141,833,000.

**It is not to be denied, however, that efforts by some men have** been made not only to withhold payment of the promised interest, but to give up all endeavor to pay the principal. As yet they have not succeeded. It may be hoped they will never succeed. Heavy as the burden is, we can bear it better than the heavier burden of national disgrace. Let us preserve our nation's honor by national honesty; for if we were moved even by the lower motives, we might still see that national discredit would be a great national loss. Let us try to lift this burden off the nation as soon as we can, without excessive effort, that it may not press as a permanent misfortune upon our posterity. A dim feeling that "posterity has done nothing for us, why should we do so much for posterity," may enter some minds, and more perhaps than are conscious of it. But our forefathers did every thing for us. To their wisdom, their efforts, their sacrifices, we owe all we have and all we are. We can repay our debt to them only by acting for posterity as they did for us.

## SECTION XV.

## POWER TO COIN MONEY.

**This is always recognized as a right which belongs necessarily to every independent sovereignty. A coin is a piece of metal on which some sovereign, prince, or State has placed its symbol, and thereby declared that the piece of metal contains a certain quantity of a certain purity.**

**Coins are the money of the world. They rest upon the faith and honesty of the State which issues them. Paper money, so called, is not money; it is only the promise to pay money. It is comparatively a modern invention. While it is convertible at pleasure into coins, and is received as coined money because so convertible, it is then the representative of money, but itself is never money.**

**Formerly, before the invention of paper money and national indebtedness, governments in great straits resorted to the device of "debasement of the coin," as it was called. That is, a king would make a coin of gold or silver, with the mark that declared it to contain, we will say, an ounce of silver, and he would put one-fourth of an ounce of lead into it, making it contain only three-fourths of an ounce of silver. This seemed to give him a quarter part of all his coinage for the price of lead!**

**Sometimes this debasement would take place secretly, the king hoping that it would not be discovered. Sometimes it was avowed, and the king would make a law that the new coins should be taken as of the same value with the old ones. Equally foolish was he to hope that his secret would not be found out, or that his law could make lead worth as much as silver. Debasement of the coin is never practised now, because the use of national paper money has taken place, and answers the same purpose. All States now use this. Perhaps they will find out that they are equally foolish with the king above mentioned. As time goes on, and the world becomes wiser, it may perhaps discover that the legal substitution of promises to pay, instead of paying, while it may give immediate relief, and even a flush of prosperity, is necessarily followed, sooner or later, by a period of equal, if not greater, depression and disaster.**

**When the exigencies of the late war pressed with almost crushing weight upon our government, they yielded to the necessity. Up to that time, only money could legally satisfy a debt or promise to pay money; in other words, only money was a legal tender. But the government, by law, made their own promises to pay money a legal**

tender in the stead of money; and thus paper money came into universal use, and actual money disappeared.

There was some effort to give this measure a constitutional sanction, under the power given to Congress "to coin money and regulate the value thereof." But it was vain and meaningless. The measure rested simply upon overpowering necessity; and on that ground it might be defended as a thing that was done because it was impossible to create and use the means necessary for the preservation of our national existence without doing it. That is to say, it may be defended on the ground of an overruling necessity, and on no other. It was a case of national life or death.

At the time, many sensible men thought it would be better to go on without making paper money legal, and raise whatever sums were necessary by loans. But these sums were so enormous, that public credit would have gradually sunk so low (if it did not wholly perish) that the national bonds would have brought a very low price, and the debt would have exceeded all possibility of payment; and the interest payable thereon required a taxation which could not have been endured, and would have ended in repudiation; that is, in national bankruptcy and dishonor. Our experience in the comparatively trifling war with Great Britain in 1812 may give us some instruction. Then our bonds were sold at from 15 to 25 per cent discount, the government receiving their payments in bills of banks that did not pay specie; and, in fact, the government borrowed money at enormous rates. Had we tried the same thing in the civil war, the banks throughout the country must have suspended, and the government have carried on the war with their paper, and not with gold and silver; and when things were at their worst, and money was needed most, our bonds would not have brought half their nominal amount. As it was, very skilful financiering was required to carry us along. And, on the whole, it may be believed that our condition at this time, bad as it is, is certainly no worse than it would have been had the government attempted to struggle through our difficulties on a hard money basis.

It is certain, however, that they who concluded to resort to paper money as the best thing they could do, accepting it as a necessity forced upon them by the war, had no thought of its continuing much beyond the war. They supposed, and the nation supposed, that as soon as peace was established, the necessity of paper money would pass away, and the law making it a legal tender would be repealed.

So it has not been. At this day, after nine years of peace, we have only paper money in use, and as much of it as ever; and no settled and definite plan has yet been adopted to relieve us from this heavy burden. It is undoubtedly a principal cause of the low

credit of the United States in the markets of the world, in comparison with that of nations some of which have not one-tenth of our resources. This costs us much, in many ways. What it costs us in one way may be learned from a comparison of our debt and interest with the debt and interest of Great Britain. We may call our debt, in round numbers, two thousand millions. It is, as already stated, a little more. It costs us annually about one hundred millions, or 5 per cent. The debt of Great Britain is but little less than four thousand millions (exactly \$3,924,860,000), and it costs them annually about one hundred and twenty millions, or 3 per cent.

At this moment there is no question more interesting to the people than when and how we can be done with paper money as a legal tender, and take our place among the nations whose business rests upon a gold and silver basis. Everybody admits the expediency, and indeed the necessity, of doing this. Everybody knows that when it takes place there must be a universal shrinking of values, and, may be, a universal distress. Everybody is therefore seeking for a plan which will do away with irredeemable paper money as soon as may be, and with the least possible disturbance and distress in the community.

Innumerable are the plans proposed. All that can be said here is, that it may be hoped that some one will be selected, and then adhered to firmly. Whether it is the best plan, or the second best, or the third best, is not of so much consequence as that it is one which, in the end, will accomplish its purpose; and that it be carried out into full effect, steadily and constantly, in despite of the clamorous begging for relief which is sure to be heard in those troublous times which are sure to come. If any such plan were adopted, and the conviction that it would be adhered to fixed in the public mind, this conviction would of itself accomplish half the purpose of the plan of recovery.

## SECTION XVI.

### OF NATURALIZATION.

All that the constitution says upon the subject is, that Congress has among its powers one "to establish a uniform rule of naturalization."

There were wise men among the framers of the constitution; but the wisest of them could not have anticipated the vast immigration into this country which has taken place. The subject excited little attention; for we find in the journal of the convention that it gave

rise to no debate. But of what immense importance it has been! This country has offered a refuge and a home to the indigent subjects of old States; an opportunity for successful industry to those to whom the crowded countries beyond the seas refused the means of well-paid labor and comfortable subsistence; and safety and welcome to those whom oppressive laws threatened with the loss of liberty and life. If we add that it permitted an escape from punishment to some who deserved it for their crimes, we speak of a few only, who bear no proportion to multitudes who have come to us for other and better reasons.

By the census of 1870 the whole number of the population of this country was 38,558,371; of this number 5,567,229 were foreign born, or more than one-eighth of the whole. We read in history of the countless hordes who, in the fourth century of Christianity and afterwards, came down from the northern regions of Europe and overspread the whole of the Western Roman empire, conquerors everywhere, and founded the existing nations of southern and middle Europe. They were centuries in doing this work. And yet the whole of these invading hosts, from the beginning to the end, were probably a smaller number of persons than those who have come from abroad, and have died or are now living in the United States. And still our broad lands welcome them; and should the crowded millions of Asia, now separated from us only by the ocean, find their way across that highway of nations, for them also we can offer land enough, and a welcome, if only we can hope that they will leave behind them habits which must be a barrier between them and us, and bring with them no elements of character which must needs prevent their taking their place as citizens of our common country, free without license, and useful by their industry without being harmful by their lives.

By naturalization a foreigner becomes, to all intents and purposes, a citizen of the United States, with no disability attaching to him on account of his foreign birth, except that he cannot be President or Vice-President of the United States. Congress, in pursuance of the power given to it by the constitution, has, at sundry times, enacted laws of naturalization. Those in force at the present time are as follows:—

#### LAWS OF NATURALIZATION.

**An alien or foreign-born person may be naturalized, if he declares, on oath or affirmation, before the Supreme, Superior, District, or Circuit Court of some one of the States, or a Circuit or District Court of the United States, two years at least before his admission,**

that it was, *bona fide*, his intention to become a citizen of the United States, and to renounce all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty whereof such alien is at the time a citizen or subject. He must, also, when applying to be admitted, declare, on oath or affirmation, that he has never borne any hereditary title or been of any order of nobility, or, if he has borne such title, that he renounces the same, and that he will support the constitution of the United States, and that he renounces and abjures for ever all allegiance, &c. (as before). He must also prove to the satisfaction of the court, and by other evidence than his own oath, that he has resided within the United States five years at least, and within the State or Territory where the court then is, one year at least, and has behaved during that time as a man of good moral character, attached to the prosperity of the constitution of the United States, and well disposed to the good order and happiness of the same.

An alien who is a minor, and has resided in the United States three years next preceding his arriving at the age of twenty-one years, and has continued to reside therein until he made application to be admitted a citizen, may, after arriving at twenty-one years of age, and after residing in the United States five years, including the years of his minority, be admitted without having made the previous declaration stated above. But at the time of his admission he must declare, on oath or affirmation, and prove to the satisfaction of the court, that it had been his *bona fide* intention during the three years next preceding his admission to become a citizen of the United States. At the time of his admission he must declare, on oath or affirmation, and prove to the satisfaction of the court, his residence and character, and renounce all allegiance, &c., in the same way as required in the preceding section at the admission of an alien not a minor.

In addition to these it is provided that a seaman who declares his intention as before provided, and thereafter serves three years in American vessels, may be admitted as a citizen. Also, that one who enlisted in the regular or volunteer service of the United States, and was honorably discharged therefrom, may be admitted, after proof of residence of one year within the United States, and of good character.

Every court of record in any State having common-law jurisdiction, and a seal and clerk or prothonotary, is a District Court within the meaning of these laws.



## PRACTICE.

An alien desiring to make the preliminary declaration may go to the clerk of any of the above courts, and, expressing his intention, he will receive from the clerk the proper form, or if the clerk cannot give it to him, may draw it up in the form given below, and make oath thereto. This will be recorded, and a certificate given him, which he should keep; but if he loses it, he may obtain a certified copy from the clerk.

Then, when the time comes for his admission, he must go to the clerk of a court competent to admit him and present his certificate. The clerk will give him a deposition, stating the above facts, which he will take, and go with his witnesses (one being enough, unless the court requires more) before the court who examines the applicant and the witness under oath; and the depositions are then signed and sworn to by the parties in open court, and the court then makes an order for his admission, and the clerk gives him a certificate that he has been admitted as a citizen, and this certificate is thereafter evidence of the fact; and, if lost, a copy may be obtained from the clerk, the whole procedure being recorded.

Annexed are forms proper for the whole procedure in naturalization.

## (1.)

## PRELIMINARY DECLARATION OF INTENTION.

## UNITED STATES OF AMERICA.

To the Honorable the Judge of the Court of within  
and for the District of

RESPECTFULLY REPRESENTS (*here insert the name of the applicant*) of (*residence*) in said District an alien, that he was born in (*place of birth*) on or about the (*time of birth*) day of in the year of our Lord eighteen hundred and and is now about years of age; that he arrived at (*place where he first landed*) in the District (or State) of (*name of District or State*) in the United States of America, on or about the (*day of landing*) day of in the year of our Lord eighteen hundred and ; that it then was, and still is, his *bona fide* intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to every foreign prince, state, potentate, and sovereignty whatsoever, — more especially to (*name of sovereign or state to whom he owed allegiance*) whose subject he has heretofore been. He therefore prays that this his declaration and intention may become a record of this honorable court, agreeably to the laws in such case made and provided.

(*Signature of Applicant*).

District (or State), to wit : Court, 187

Then the said (*name of applicant*) personally appeared before the clerk of said court, and made oath to the truth of the facts as set forth in the above declaration to the court, by him subscribed.

Attest: (*Signature of Clerk*).

(2.)

# CERTIFICATE OF THE CLERK TO THE DECLARATION.

## A COPY.

I, clerk of (*naming the court*), do hereby certify that the above is a true copy of the declaration of intention to become a citizen of the United States, of the original whereof is on record in my office.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of said court, at on the day of in the year eighteen hundred and

(*Seal of the court*). (*Signature of Clerk*).

(3.)

# APPLICATION FOR ADMISSION AS A CITIZEN.

## UNITED STATES OF AMERICA.

District, ss.

To the Honorable the Judge of the (*here insert the name of the court*) within and for the District of (*here give the district or county*).

RESPECTFULLY REPRESENTS (*here give the name of the applicant*) of (*the name of the town or city*) in said district, an alien, that he was born in (*insert here the place of his birth*) on or about the day of in the year of our Lord eighteen hundred and and is now about years of age; that he arrived at in the United States of America, on or about the day of in the day of in the year of our Lord eighteen hundred and that it is his *bona fide* intention to reside in and become a citizen of the United States of America, and to renounce all allegiance and fidelity to every foreign prince, state, potentate, and sovereignty whatsoever, — more especially to (*here insert the name of the sovereign or state to which he owed allegiance*) whose subject he has heretofore been: All which appears in the record of the honorable court (*naming the court where he made his preliminary declaration*), to wit, on the day of A.D. 18

And the said petitioner further represents, that he has ever since continued to reside within the jurisdiction of said United States, to wit, at said (*the place or places of his residence in this country*); that he has never borne any hereditary title, or been of any of the orders of nobility; that he is ready to renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever, and particularly to (*here repeat the name of the sovereign or state to which he has borne allegiance*),

whose subject he has heretofore been; that he is attached to the principles of the Constitution of the United States of America, and well disposed towards the good order and happiness of the same.

WHEREFORE your petitioner prays, that he may be admitted to become a citizen of the said United States of America, according to the forms of the statutes in such case made and provided.

(Signature of Applicant).

187      Sworn to by the said petitioner,  
   Before me,

Clerk.

If the applicant was a minor, and made no preliminary declaration, the form of his application must be the same as above, excepting that the words, "being then a minor under the age of                      years," must be inserted immediately before the words, "and it is his *bona fide* intention;" and the words, "all which appears in the record of," as far as "A.D. 18   ," must be stricken out.

If the applicant comes as a sailor, who, having declared his intention as before provided, thereafter served three years in American vessels; or if he comes as one who enlisted in the regular or volunteer service of the United States, and has resided one year within the United States, a statement of the necessary facts must be inserted immediately before, "Wherefore your petitioner prays;" and such changes made in the application as the facts require.

(4.)

DEPOSITION AND OATH OF WITNESSES.

(Blanks to be filled in accordance with the facts.)

UNITED STATES OF AMERICA.

District, to wit: city (or town) of

187

WE                      both citizens of said United States, severally depose and say, that we have known                      the foregoing petitioner, for five years last past, during which time he has resided in said                      and that he has resided within the State of Massachusetts one year at least; and has conducted himself and behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed towards the good order and happiness of the same.

187      . Sworn to by said witnesses.  
   Before me,

Clerk.

(5.)

OATH OF PETITIONER.

I,                      do solemnly swear, that I do absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatsoever, particularly to (name of the sovereign and state to which he has borne allegiance), whose subject I have

heretofore been; and that I will support the Constitution of the United States of America,—so help me God.

(6.)

CERTIFICATE OF CLERK TO THE OATH.

(Blanks to be filled in accordance with the facts.)

UNITED STATES OF AMERICA.

District of \_\_\_\_\_ to wit:

At a special District Court of the United States, holden at said Boston, on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 187 \_\_\_\_\_ the said \_\_\_\_\_ having produced the evidence required by law, took the aforesaid oath, and was admitted to become a citizen of the United States of America; and the court ordered that record thereof be made accordingly.

Attest:

Clerk.

(7.)

CERTIFICATE OF CLERK FOR RECORD.

(Blanks to be filled in accordance with the facts.)

UNITED STATES OF AMERICA.

District, ss.

BE IT REMEMBERED, That at a District Court of \_\_\_\_\_ at \_\_\_\_\_ within and for the district of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and seventy \_\_\_\_\_. Personally appeared before the clerk of said court \_\_\_\_\_ of \_\_\_\_\_ in said district, \_\_\_\_\_ an alien and a free white person, \_\_\_\_\_ and by his declaration in writing, on oath set forth, That he was born in \_\_\_\_\_ on or about the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord eighteen hundred and \_\_\_\_\_ and is now about \_\_\_\_\_ years of age; that he arrived at \_\_\_\_\_ in the \_\_\_\_\_ district of \_\_\_\_\_ in the United States of America, on or about the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord eighteen hundred and \_\_\_\_\_ that it then was, and still is, his *bona fide* intention to become a citizen of the United States of America, and to renounce forever all allegiance and fidelity to every foreign prince, state, potentate, and sovereignty whatsoever, more especially to \_\_\_\_\_ whose subject he has heretofore been. He therefore prayed, that his said declaration and intention might become a record of said court, agreeably to the laws in such case made and provided.

Whereupon the declaration of the said \_\_\_\_\_ was admitted to become a record of said court accordingly.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 187 \_\_\_\_\_ in the ninety-\_\_\_\_\_ year of the Independence of the United States of America.

Clerk of the

Court for the  
District of \_\_\_\_\_

(8.)

## CERTIFICATE OF THE CLERK TO BE GIVEN TO THE APPLICANT.

*(Blanks to be filled in accordance with the facts.)*

UNITED STATES OF AMERICA.

*District, ss.*

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME,—GREET-  
 ING. Know ye, That at the court of holden at  
 within and for the district of on the  
 day of in the year of our Lord one thousand eight hundred  
 and seventy- of in said district,  
 born in having produced the evidence, and taken and sub-  
 scribed the oath, required by law, was admitted to become a citizen of the  
 United States, according to the acts of Congress, in such case made and  
 provided.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the  
 seal of said court at aforesaid, this day of  
 A.D. 187 and in the ninety- year of the  
 Independence of the United States of America.

*Clerk of the  
 District of*

*Court for the*

## FORMS ANNEXED TO THIS SECTION.

1. Preliminary declaration of intention.
2. Certificate of the clerk to the declaration.
3. Application for admission as a citizen.
4. Deposition and oath of witnesses.
5. Oath of petitioner.
6. Certificate of clerk to the oath.
7. Certificate of clerk for record.
8. Certificate of the clerk to be given to applicants.

## SECTION XVII.

## ADMISSION OF NEW STATES.

The framers of the constitution contemplated the possibility, perhaps the probability, of new States desiring and receiving admission into the Union. But we may look into the debates and discussions of those days, and nowhere, even among the most sanguine anticipations, shall we find even a hope expressed of the vast increase of the Union by the admission of new States. To the original thirteen, twenty-four have been added, making the whole number now thirty-seven; and we have also nine territories organized,

which are awaiting a sufficient growth in population to ask for admission as States, and some of whom will receive it soon.

In giving to Congress this power of admitting new States, precautions were adopted to prevent injury to States already in the Union; no new State can be formed within an old State, as by the junction of two or more States, or parts of States, without the consent of the legislature of the States concerned, as well as of Congress.

It must be remembered that by this formation of new States the balance of power between the States may be much affected, by reason of the construction of the Senate. Thus Texas was admitted as a State in 1845. But in the act admitting that State (which covers a vast extent of country), it was provided that four new States might be formed from that single State. If that provision were carried into effect, what is now Texas would have five times the strength in the Senate which it now has.

## SECTION XVIII.

### A REPUBLICAN FORM OF GOVERNMENT GUARANTEED.

The constitution provides that the United States shall guarantee to every State in this Union a republican form of government.

The true construction of this clause is, not that the United States shall guarantee to each State that *it* shall have a republican government, but that the United States shall guarantee to every State that every other State shall have a republican form of government. For, let it be supposed that a State desired admission under a government which was not republican in form. Thus we may suppose by way of illustration, what is hardly possible, that one of the provinces of the Dominion of Canada desired to enter into the Union, but that it retained so much fondness for monarchical government that it wished to have a permanent executive, with an hereditary body invested with hereditary rule or power. If the word "guarantee" is to be construed technically, it is only a promise to a party to make good to that party some benefit or advantage which that party requires or desires. Therefore, that party may waive the guaranty, and may say it was intended only to secure to us that we should have a republican form of government if we chose, and we do not choose it. Surely the answer would be, All the other States are interested in this question. All would be injured if there were one among them which was not republican, and the constitution promises all that all should be republican.

The importance of this question springs from the possibility that some one or more of the States might desire changes in her form of government not compatible with republicanism. For example, it might disfranchise certain classes, giving the elective franchise only where a large pecuniary qualification existed, or making eligible to office only the members of a narrow class, always retaining the name of a republic. It is plain that every State might complain of this, and say to Congress, The constitution gives this guarantee of republicanism not to that State only, which may waive it if it will, but to all of us, and to every one of us; and we do not waive it.

If there is ever an attempted violation of the rule implied under this guaranty, it will undoubtedly be concealed and disguised by false pretences. That is to say, the State will claim still to be a republic, as Holland did when it became virtually a monarchy; and as Venice did, when its government became a close and despotic oligarchy. The difficulty will be in the exact definition of a republic. If the time ever comes when this difficulty shall present itself, well may we or our children or our children's children remember that Lincoln has left for us, under circumstances which made it immortal, the definition we have already spoken of. A government *of* the people, *by* the people, and *for* the people, is a republic, and cannot fail to be a republic. And a government which does not come within this definition, whatever it may call itself, is not a republic.

## SECTION XIX.

### OF AMENDMENTS TO THE CONSTITUTION.

Some persons in our own country, and many more in the old countries of Europe, have regarded the respect which the people of this country pay to their constitution as excessive. They represent the constitution as a fetter upon us; as more than a fetter, — as an iron framework with which we have chosen to invest ourselves, and which, however we outgrow it, we cannot improve. This reproach would be just, were it not that the constitution provides for its own growth, development, and improvement.

It is the supreme law of the land, and expresses the will of the people. But every law is made by the servants of the people, and expresses their will. Why should not the constitution be as easily changed and made to conform as promptly to any change in the will of the people as the law itself? Look, however, at the law, and see how that can be changed, and, on the other hand, how it cannot be

changed. A mass meeting of the citizens of Ohio, for example, even were that physically possible, could not change the law. And why? Because the people have seen fit to guard themselves against hasty and unwise legislation, by surrounding it with a certain measure of difficulty and delay. First, the servants of the people must be formally chosen by the people, to do for them this very work of legislation. Then they assemble in two bodies, each of which is a check upon the other, and the executive is entrusted with a limited veto upon the two Houses. Then every bill proposed, before it can become a law, must in each House pass through several appointed steps, at any one of which it may be arrested, and all of which taken together tend to secure to every proposed measure a sufficient consideration.

The question may now be repeated, Why are not these checks sufficient in the case of the constitution? The answer is easy. The constitution contains what the people believe to be essential and fundamental principles of all law, together with a machinery of government carefully devised to secure wise legislation and faithful execution of the laws; and to this machinery it is desirable to give a large measure of permanence and stability. Therefore the constitution may be changed at any time and to any effect which the will of the people requires; but only by a method well devised to make it certain that this change is desired not by the passionate, impulsive, and temporary will of the people, but by its careful, instructed, and deliberate will.

#### AMENDMENTS, HOW MADE.

Congress may propose amendments, or may call a convention to propose amendments, if the legislatures of two-thirds of the several States ask for it; and amendments made by Congress or by that convention are valid as parts of the constitution, when they are ratified by the legislatures of three-fourths of the States, or by conventions in three-fourths thereof, as either mode may be proposed by Congress.

Experience thus far has justified the framers of the constitution in believing this method would render it sufficiently easy for the people to change the constitution whenever they did certainly and unmistakably desire it, and sufficiently guarded to protect the constitution from any change which was not so desired.

By the Congress which met in New York, in 1789, the first ten articles of amendment were proposed and ratified in that year, in 1790, and 1791. They were all founded upon wishes or recommendations presented by different States, when adopting the constitution.



In 1793 was proposed the eleventh article of amendment, which was ratified. In 1803, the twelfth article; in 1865, the thirteenth article; in 1868, the fourteenth article; in 1870, the fifteenth article. These articles are published in preceding pages, in connection with the constitution.

## SECTION XX. OF THE CENSUS.

This is a Roman, that is to say, a Latin word. By the ancient constitution of Rome, the people were divided into six classes, according to their wealth; those few only who possessed a very large sum being in the first class, and the required sum diminishing in the others, down to the sixth class, which was composed of those who had nothing, or too little to entitle them to admission in any higher class. That this classification might be made, every Roman citizen was required to come on a certain day to an open place in the city, and there declare, under oath, his name, dwelling, children, and the value of his property, under penalty of being scourged and losing all his goods. This enumeration took place every five years, and was called a census. I have described it briefly, to show that this periodical enumeration was made for political purposes, being required by the classification of the citizens, who then voted in the classes thus formed. Of the censuses taken among different nations in different ages, all have been for some political purpose, from the time when a decree went forth from Cæsar Augustus "that all the world should be taxed, and all went to be taxed (or to be registered for the purpose of taxation), every one unto his own city," to our own day.

As by our constitution political power was given mainly in proportion to numbers, it was essential that an enumeration should be made from time to time; and the constitution provided that the requisite enumeration should be made within three years after the first meeting of Congress, and within every ten years afterwards.

The first Congress ordered the first census, which was taken in 1800, and a census has been taken every ten years since. It was apparent that at first there was little thought of learning more by the census than what was requisite to distribute political power among the people, in accordance with the requirement of the constitution; for the first census only contained and enumerated the free white males of sixteen years and upwards, the same under that age, the number of females, and the number of slaves, and the number of heads of families.

Since then, however, the science of Statistics has received immense development. It is the object of this science to ascertain, collect, and arrange all facts which have an important bearing upon the resources, the growth, the political, financial, intellectual, industrial, social, physical, and moral condition of a nation. Societies have been formed, journals published, and meetings held of men interested in such facts, from various countries, all intended to promote this science. It was seen at once that our census afforded a most important and serviceable instrument for that purpose. Every succeeding census has been made more instructive, by increasing the subjects of inquiry and improving their classification. At present, among the topics concerning which inquiry is made and information recorded, may be enumerated the number of families, of houses, the sex, age, color, birthplace, occupation, profession, or trade, of every person, the married and the widowed, the deaf and dumb, blind, idiotic or insane, with the age and sex of each; the age, sex, color, occupation, and birthplace of every one who had died within the year of enumeration and before the day thereof, with the cause thereof. Also the value of property; the number of acres improved or unimproved; their value, their productions, with the number, kinds, and value of the live-stock owned, and of agricultural implements and machinery; the number and kinds of educational institutions, with the number of scholars and of teachers, and their revenue; and the number of those who cannot read and write; also inquiries concerning mines, manufactures, and fisheries are included, so as to ascertain the amount of capital invested, the motive power employed, the number of persons of each sex employed and the wages paid, the quantity, kind, and value of raw materials used, and the quantity, kind, and value of the products.

Already has the information thus acquired been of great use in the national and State legislation, and also in regulating or suggesting private enterprises. And as time goes on, and experience shows how to make the census more useful, its beneficial results will be greater, more clearly seen, and more widely acknowledged. Many of the States have provided by law for a census within each State, at periods intermediate between those of the national census.

We annex to this chapter some instructive tables, giving to the reader the means of comparing this country with other countries in Europe, Asia, and Australia, and then with each other, upon interesting points.<sup>1</sup>

For example, by Table I. he will find that the United States

<sup>1</sup> We take these tables, by permission, from a valuable and instructive work, entitled "The Statesman's Manual," published by Macmillan & Co., London and New York.

ranks the fifth in population among all the States in the world, while it is the fourth in territorial extent. In this table the British empire stands second only to the Chinese empire in population, while we hold the fifth place. But the population of the British Islands is much less than of this country; and to give the British empire the place it holds in this table, the enormous population of India must be added to that of the British Islands and colonies.

By Table II. we learn that this country is only the twenty-third, if the countries of the world are ranked according to the *density* of population, or the number of inhabitants to the square mile of surface. Belgium stands at the head. This little State, which is smaller in extent than any but 7 of our 37 States, has 451 persons on each square mile; while we have but 11. That is to say, this country is 3,421 times as large in extent as Belgium, while that country has 41 times as many living on each square mile as this country. The British Islands have 24 times as many, France 15 times as many, and Germany 17 times as many persons to the square mile as we have. Many ages must elapse before our population can press upon our means of subsistence, all which are derived primarily from land, so as to make it as difficult for the masses to live here in comfort as it now is there. No wonder that their crowded population is pouring into our vacant lands at such a rapid rate.

Table III. relates to railroads. Here we lead the world in the number of miles open to traffic, having more than four times as many as the British Islands, which come next to us. And yet we rank but the eleventh in the number of miles of railroad to each square mile of surface.

Table IV. relates to telegraphs. Here, too, we lead the world in the miles of telegraph; but not so widely as in railroads, Russia, which comes next to us, having nearly half as many. We hold a still lower place, — only the seventeenth, — if the nations are ranked by the miles of telegraph to the square miles of surface.

Table V. relates to the mercantile navies of the world. It shows us that we rank second, Great Britain alone exceeding us, having more than twice as many in tonnage, and three times as many in number as we have.

Table VI. gives the debts and revenue of the various nations, in pounds sterling, to which all of them are reduced; this sum multiplied by five gives the amount in dollars. Here Great Britain takes the lead, France coming next, and we holding the third place. The debts are also compared with the revenues. The debt of Great Britain is equal to the revenue of  $10\frac{1}{2}$  years; that of France to its revenue of  $7\frac{1}{2}$  years; while our debt equals the revenue of  $6\frac{1}{2}$  years.

## I.

*Rank of the Principal States of the World.*

According to Population.		According to Territorial Extent.	
States.	Inhabitants at last Enumeration, or Estimate.	States.	Area: English square miles.
1. Chinese Empire . .	425,213,152	1. Russian Empire . .	7,861,380
2. British Empire' . .	199,817,108	2. British Empire . .	4,677,432
3. Russian Empire . .	82,172,022	3. Chinese Empire . .	3,924,627
4. Germany . . . .	41,058,189	4. United States . .	3,603,844
5. United States . .	38,558,371	5. Brazil . . . . .	3,100,104
6. France . . . . .	36,469,875	6. Turkey . . . . .	1,812,048
7. Austria-Hungary . .	35,904,435	7. Mexico . . . . .	1,080,442
8. Turkey . . . . .	35,350,000	8. Persia . . . . .	648,000
9. Japan . . . . .	35,000,000	9. Argentine Confed. .	515,700
10. Italy . . . . .	26,796,253	10. Peru . . . . .	502,760
11. Spain . . . . .	16,301,851	11. Bolivia . . . . .	473,300
12. Siam . . . . .	11,800,000	12. Colombia . . . .	432,400
13. Brazil . . . . .	9,858,000	13. Venezuela . . . .	368,235
14. Mexico . . . . .	9,176,082	14. Sweden and Norway	288,771
15. Sweden and Norway	5,905,542	15. Siam . . . . .	250,000
16. Belgium . . . . .	5,087,105	16. Chili . . . . .	230,977
17. Persia . . . . .	4,400,000	17. Austria-Hungary .	226,406
18. Portugal . . . . .	3,995,152	18. Morocco . . . . .	219,000
19. Netherlands . . .	3,915,956	19. Germany . . . . .	212,091
20. Peru . . . . .	3,199,000	20. France . . . . .	201,900
21. Colombia . . . . .	2,794,473	21. Spain . . . . .	182,758
22. Morocco . . . . .	2,750,000	22. Japan . . . . .	156,604
23. Switzerland . . .	2,669,147	23. Italy . . . . .	112,677
24. Venezuela . . . .	2,200,000	24. Paraguay . . . . .	57,303
25. Chili . . . . .	1,938,861	25. Portugal . . . . .	36,510
26. Denmark . . . . .	1,784,741	26. Greece . . . . .	19,941
27. Bolivia . . . . .	1,742,352	27. Switzerland . . .	15,233
28. Argentine Confed. .	1,736,922	28. Denmark . . . . .	14,553
29. Greece . . . . .	1,457,894	29. Netherlands . . .	13,464
30. Paraguay . . . . .	1,200,000	30. Belgium . . . . .	11,267

## II.

*Density of Population of the Principal States and Territorial Divisions of the World.*

States and Territorial Divisions.	Census Year.	Population.	Area: English square miles.	Population per square mile.
Belgium . . . . .	1870	5,087,105	11,267	451
England and Wales . .	1871	22,704,108	58,320	389
Netherlands . . . . .	1870	3,915,956	13,464	291
Gt. Britain and Ireland .	1871	31,817,108	119,924	265
Italy . . . . .	1871	26,796,253	112,677	237
Japan . . . . .	Estimate.	32,794,897	156,604	209
British India . . . . .	1871	190,277,644	968,929	207
Germany . . . . .	1871	41,009,999	212,091	193
Switzerland . . . . .	1870	2,669,147	15,233	175
Ireland . . . . .	1871	5,402,759	31,874	169
Austria-Hungary . . .	1869	35,904,435	226,406	158
France . . . . .	1872	36,102,821	201,900	150
Denmark . . . . .	1870	1,784,741	14,553	111
Chinese Empire . . .	Estimate.	425,213,152	3,924,627	110
Scotland . . . . .	1871	3,358,613	30,635	109
Portugal . . . . .	1868	3,995,152	36,510	108
Spain . . . . .	1860	16,301,850	182,758	90
Greece . . . . .	1871	1,457,894	19,941	73
Sweden and Norway .	1872	6,018,412	288,771	21
Turkey . . . . .	1844	35,350,000	1,812,048	20
Chili . . . . .	1869	1,938,861	130,977	15
Morocco . . . . .	Estimate.	2,750,000	219,000	12
United States . . . . .	1870	38,558,371	3,603,844	11
Russian Empire . . .	1867	82,172,022	7,861,330	10
Mexico . . . . .	1871	9,176,082	1,030,442	9
Colombia . . . . .	1870	2,900,633	432,400	7
Argentine Confederation	1869	1,736,922	515,700	3
Brazil . . . . .	1872	10,095,978	8,100,104	3

## III.

*Railways of the World.*

States and Territorial Divisions.	Year.	Length of Railways open for traffic.	One mile of Rail- way to square miles of area.
	Jan. 1.	English miles.	English square miles.
Belgium . . . . .	1872	1,892	6
Great Britain and Ireland . .	1873	15,814	8
Netherlands . . . . .	1872	1,045	13
Germany . . . . .	1873	13,066	15
Switzerland . . . . .	1871	320	18
France . . . . .	1871	10,333	19
Italy . . . . .	1871	3,895	27
Denmark . . . . .	1872	530	28
Austria-Hungary . . . . .	1872	7,529	30
Spain . . . . .	1870	3,801	54
United States of America . .	1873	70,178	56
Portugal . . . . .	1869	453	81
Roumania . . . . .	1871	507	90
Dominion of Canada . . . .	1873	2,923	143
British India . . . . .	1870	4,182	230
Russia . . . . .	1872	7,297	280
Sweden and Norway . . . .	1873	1,049	292
Chili . . . . .	1872	452	298
Costa Rica . . . . .	1873	82	318
Honduras . . . . .	1873	62	638
Egypt . . . . .	1870	737	907
Argentine Confederation . . .	1872	875	955
Uruguay . . . . .	1873	57	1,290
Peru . . . . .	1873	375	1,340
Paraguay . . . . .	1873	44	2,334
Australasia . . . . .	1870	1,058	2,404
Mexico . . . . .	1870	300	3,435
Turkey . . . . .	1873	488	3,720
Cape of Good Hope . . . .	1873	134	5,000
Colombia . . . . .	1873	65	6,600
Brazil . . . . .	1872	410	7,573

## IV.

*Telegraphs of the World.*

States and Territorial Divisions.	Year.	Length of Telegraph Lines.	One mile of Telegraph Line to square miles of area.
	Jan. 1.	English miles.	English square miles.
Great Britain and Ireland . .	1873	24,363	4
Belgium . . . . .	1872	2,694	5
Switzerland . . . . .	1873	3,430	6
Netherlands . . . . .	1872	1,869	7
Germany . . . . .	1873	26,060	8
France . . . . .	1870	23,100	9
Italy . . . . .	1870	10,595	10
Denmark . . . . .	1870	1,225	12
Portugal . . . . .	1870	1,930	14
Greece . . . . .	1872	1,226	18
Austria-Hungary . . . . .	1872	11,665	20
Spain . . . . .	1870	7,011	25
United States . . . . .	1872	75,137	36
Dominion of Canada . . . .	1872	10,995	38
Sweden and Norway . . . .	1871	7,263	40
Chili . . . . .	1873	2,045	64
British India . . . . .	1872	13,371	72
Turkey . . . . .	1870	16,125	112
Australasia . . . . .	1869	13,850	114
Costa Rica . . . . .	1873	220	118
Egypt . . . . .	1870	3,780	188
Uruguay . . . . .	1873	312	235
Guatamala . . . . .	1872	152	272
Mexico . . . . .	1870	3,150	327
Russia . . . . .	1872	31,459	330
Argentine Confederation . .	1872	3,150	391
Colombia . . . . .	1873	810	534
Peru . . . . .	1870	503	525
Bolivia . . . . .	1873	475	985
Ecuador . . . . .	1872	210	1,091
Brazil . . . . .	1873	1,500	2,580

## V.

*The Mercantile Navies of the World.*

1. SEA-GOING STEAMERS.			
States.	Number.	Tonnage.	Average Tonnage
Great Britain . . . . .	3,061	2,624,431	839
United States . . . . .	403	433,040	1,198
France . . . . .	392	316,765	808
Germany . . . . .	200	204,894	1,024
Spain . . . . .	202	138,675	686
Italy . . . . .	103	85,045	825
Austria . . . . .	91	84,155	925
Netherlands . . . . .	95	72,735	765
Russia . . . . .	114	67,522	592
Sweden . . . . .	143	53,327	373
Norway . . . . .	88	41,602	472
Denmark . . . . .	71	34,498	412
Belgium . . . . .	42	30,444	725
Portugal . . . . .	17	14,536	855
Greece . . . . .	8	3,390	424
Turkey . . . . .	9	3,049	338
Other States . . . . .	109	70,067	643
Total Steamers . . . . .	5,148	4,328,193	847
2. SEA-GOING SAILING VESSELS.			
States.	Number.	Tonnage.	Average Tonnage
Great Britain . . . . .	20,832	5,320,089	255
United States . . . . .	6,786	2,132,338	314
Norway . . . . .	3,930	1,137,177	289
Italy . . . . .	4,220	1,126,032	266
Germany . . . . .	3,834	893,952	233
France . . . . .	3,973	763,059	193
Spain . . . . .	2,867	540,211	188
Netherlands . . . . .	1,447	397,232	274
Greece . . . . .	1,955	392,894	201
Russia . . . . .	1,327	347,744	262
Austria . . . . .	965	336,113	348
Sweden . . . . .	1,827	327,409	177
Denmark . . . . .	1,226	170,834	139
Portugal . . . . .	415	93,815	226
Turkey . . . . .	224	34,711	168
Belgium . . . . .	46	14,704	319
Other States . . . . .	407	152,022	373
Total Sailing Vessels . . . . .	56,281	14,185,836	252
Total Steamers and Sailing Vessels . . . . .	61,429	18,514,029	301



## VI.

*Debts and Revenue of the Principal States of Europe and America.*

States.	Financial year.	Debt.	Revenue.	Years of Revenue represented by Debt.
<i>Europe : —</i>		£	£	Years.
Austria-Hungary .	1873	346,926,906	57,086,482	6
Belgium . . . .	1873	36,981,960	7,336,964	5
Denmark . . . .	1872	12,747,589	2,287,392	5½
France . . . . .	1873	748,790,082	100,040,804	7½
<i>Germany : —</i>				
Prussia . . . . .	1873	67,356,837	31,506,520	2½
Bavaria . . . . .	1872	35,446,896	9,182,355	4
Württemberg . .	1872	14,964,133	2,030,046	7½
Saxony . . . . .	1872	17,247,169	2,062,937	8½
Great Britain and Ireland . . . . .	1873	784,972,103	76,608,770	10½
Greece . . . . .	1872	15,512,000	1,217,964	12½
Italy . . . . .	1872	360,807,407	61,933,401	6
Netherlands . . .	1873	78,416,152	8,356,143	9½
Portugal . . . . .	1873	72,833,000	4,103,421	18
Russia . . . . .	1873	375,000,000	68,109,285	5½
Spain . . . . .	1871	261,475,000	27,901,746	9½
Sweden and Norway	1873	8,548,285	4,357,060	2
Switzerland . . .	1872	855,866	1,026,200	½
Turkey . . . . .	1873	215,000,000	19,488,375	11
<i>America : —</i>				
Argentine Confederation . . . . .	1873	15,036,303	3,721,324	4
Bolivia . . . . .	1873	3,200,000	1,400,000	2½
Brazil . . . . .	1872	90,000,000	9,258,621	10
Canada, Dominion of	1872	24,480,038	5,963,566	4
Chili . . . . .	1872	5,288,950	1,854,984	3
Colombia . . . .	1870	9,929,200	2,350,000	4
Honduras . . . .	1872	5,990,108	97,000	62
Mexico . . . . .	1871	79,100,000	3,700,000	22
Peru . . . . .	1872	40,720,000	5,898,235	7
United States . .	1873	446,896,598	66,747,640	6½
Uruguay . . . . .	1872	10,600,000	1,017,160	10
Venezuela . . . .	1872	20,000,000	878,520	23

## CHAPTER V.

### THE CONSTITUTIONS OF THE SEVERAL STATES.

In this chapter the constitutions of the several States are not given in full, but the method of election and the tenure of office of the executive, legislative, and judicial officers; their boundaries and area; with notices of any interesting peculiarities in the constitution. To this is added a brief account of the history and present condition of each State.

In this chapter the thirteen original States are arranged in geographical order. The other twenty-four States are arranged in the order in which they were admitted to the Union.

#### NEW HAMPSHIRE.

This State is bounded north by Canada East, east by Maine and the Atlantic, south by Massachusetts, and west by Vermont, from which it is separated by the Connecticut river. It contains 9,280 square miles, or 5,939,200 acres.

Originally it adopted its constitution in 1784, and this has been amended at different times. By it the government of the State is vested in a governor, a council of five members, and a senate of twelve members, and a house of representatives. Every town having one hundred and fifty ratable polls chooses one representative, and one additional representative for every additional three hundred polls. All of the State officers are elected annually. No person can hold the office of governor, senator, or representative, unless he conforms to some denomination of Protestantism. The judges are appointed by the governor, with the consent of the council, and hold office during good behavior.

This State has passed through many political fluctuations. It was first visited by Europeans in 1614, and a settlement was made near what is now Portsmouth. Nine years afterwards it was connected with Massachusetts as a district, and was in many points subject to the government of Massachusetts. In 1679 it was made a royal province. In 1689 it was again joined to Massachusetts. Afterwards it was for a short time connected with the colony or province of New York. In 1741 it was made a separate province or colony, and so it remained until the Revolution.

The agriculture of New Hampshire is impeded by its climate; nor is its soil in general very fertile; but in many parts of the State there are excellent and productive farms. The water-powers of the State are numerous and important, and have been to a large extent utilized. There are many manufacturing towns, some of considerable magnitude. About 112,000 acres of the surface of this State are under water.

#### MASSACHUSETTS.

This State is bounded north by Vermont and New Hampshire, east by the Atlantic Ocean, south by the Atlantic, Rhode Island, and Connecticut, and west by New York. It contains 7,800 square miles, or 4,992,000 acres.

The constitution of the State was originally adopted in 1780, and it has since been repeatedly changed. The government consists of a governor, lieutenant-governor, secretary, treasurer, auditor, attorney-general; an executive council of eight members, over whom the lieutenant-governor presides, and who are elected annually; a senate of forty members, and a house of representatives of two hundred and forty. All of these officers are chosen by the people. The judges are all appointed by the governor, with the consent of the council, and hold their offices during good behavior. They may be removed by impeachment; and the governor, with the consent of the council, may remove them upon the address of both houses of the legislature. Each branch of the legislature, as well as the governor and council, have authority to require the opinions of the justices of the supreme judicial court upon important questions of law, and upon solemn occasions.

It is supposed that navigators from Iceland, in the year 1000, wintered at a place in the south-east part of Massachusetts and Rhode Island. The Cabots, sailing under a patent granted by Henry VII., King of England, sailed along the eastern coast of America, and made several landings; and the English thereafter claimed the country, by the rights which accrued to them from the discoveries of the Cabots. There were many attempts at settlement along the New England coast; but we consider the first permanent settlement to have been that of colonists who arrived in the "Mayflower" on the 22d of December, 1620, at Plymouth. Most of them had already fled from persecution in England, to Holland, where they had sought religious liberty. They formed a community in Leyden, of which John Robinson was pastor, and William Brewster an elder. But their surroundings were utterly unsatisfactory; and they determined to encounter the dangers and sufferings of a long sea-voyage,

which were then much greater than they would be now, and the perils of hostile savages, famine, and sickness, in a mere wilderness.

We have already stated that before landing they formed and subscribed a solemn compact, which may be considered, if not the foundation, at least the beginning, of our republican constitutions. The scarcity and bad quality of their food, and their exposure to the severity of weather which they were wholly unaccustomed to, killed half their number in little more than four months, and much enfeebled the survivors; but they persisted in their purpose. There is much reason to believe that a severe pestilence, the nature of which is not known, had at that time thinned the natives along the coast of New England, and in some places almost exterminated them. But for this the colony could have hardly held their own. They were often near famishing, until 1628, when for the first time they had a plentiful harvest. In 1628 an immigration from England reached Salem, under the command of John Endicot. Large reinforcements soon followed, and Boston and neighboring towns were settled. These colonists were all Puritans; and while they made the greatest sacrifices and efforts to obtain religious freedom for themselves, there is no evidence that they acknowledged in any degree the duty of permitting religious freedom in those who differed from them.

As the colony of Massachusetts rapidly grew in numbers and prosperity, it attracted the attention of England, and there were attempts to annul the original charter, under which the colonists had emigrated. Many difficulties ensued, and in 1675 began the war with the Indians, called King Philip's war, which desolated a large part of the then settled country. Of a population of about 12,000, one man in twenty had died; and of the families, one in twenty were houseless. This war was conducted without assistance from England; but as soon as it ceased, pretensions were again asserted to a mastership over the colony. When, in 1689, reports were received of the English revolution of 1688, the men of Boston, with some from the neighboring towns, rose in arms and imprisoned the royal governor and other officers. In 1692 a new charter was given, by which Plymouth was united to Massachusetts, and the jurisdiction of that colony over Maine and other colonies acknowledged. In the same year the witchcraft delusion, which had raged in many European countries and was then active in some, began in Salem and its neighborhood, and nineteen persons were executed by hanging, and one was pressed to death.

The war of the Revolution began in Massachusetts, at Lexington and Concord; but from the very beginning the other colonies sympathized with and supported her, and as soon as possible all joined in efforts to achieve their independence.

This State is said to be naturally the least fertile of the New England States; but skilful and laborious cultivation has much improved large tracts of land. It is estimated, however, that much less than half of the total area of the State is under cultivation. The State depends mainly, though not wholly, upon its manufactures and its commerce. In manufactures it is said to stand at the head of all the States. The water-powers afforded by the Merrimac and smaller streams are everywhere utilized to their full extent; and of late years steam-power has been profitably used, partly in aid of water-power, and in some instances by itself.

#### RHODE ISLAND.

This State is bounded north and east by Massachusetts, south by the Atlantic Ocean, and west by Connecticut. It contains 1,306 square miles, or 835,840 acres, of which less than half are improved.

This State was at first embraced within the charters of Massachusetts; so, at least, it was asserted; but in 1662 a separate charter was granted, incorporating the colony of Rhode Island and Providence plantations; and under this the political institutions of the State existed and were conducted until 1843, when a new constitution was formed.

By this constitution the government consists of a governor, a lieutenant governor, secretary of state, treasurer, and attorney-general, all of whom are elected by the people annually. An auditor is also elected by the assembly. The senate consists of the lieutenant-governor, and one senator from each of the thirty-four towns in the State. The governor presides in the senate. The house of representatives consists of seventy-two members, which number cannot be exceeded. The legislature is called the general assembly; and the assent of two-thirds of the members elected to each house of the general assembly is required to every bill appropriating the public money or property for local or private purposes.

The judges are elected by the general assembly, the justices of the peace by the towns and city. The judges hold office until their place is declared vacant by a resolution of the general assembly.

This State was founded, to its honor be it said, on the principles of entire religious liberty. Roger Williams, who maintained, both in politics and religion, opinions which did not conform to those which were held by the ruling powers of Massachusetts, was banished from that colony. They would have sent him to England; but he unexpectedly left Salem in the midst of the winter, and took refuge with the Indians, with whom he remained some months, when, with five companions, he sailed in a log canoe to the spot where he fixed

his habitation. To this spot he gave the name of Providence, in acknowledgment of "God's merciful providence to me in my distress." Here it was that Williams proclaimed what was then a new doctrine, and has now become the doctrine of this great nation; namely, that no magistrates or other civil authorities have any right to prescribe, enjoin, or regulate religious belief. He was soon followed by others, who were persecuted as he had been, and the colony rapidly grew in population. It suffered severely from King Philip's war; and this Indian chief was killed in 1676, in a swamp near Mount Hope, on Naragansett Bay.

The climate of the whole State is perhaps the best in New England, especially in Newport and its vicinity. Its soil is only moderately fertile, and is on the whole better adapted for grazing than for the cultivation of cereals. The State has but a small foreign commerce, but its coasting trade is large. The manufactures of the State are very various, extensive, and profitable.

#### CONNECTICUT.

This State is bounded north by Massachusetts, south by Long Island Sound, east by Rhode Island, and west by New York. It contains 4,750 square miles, or 2,940,000 acres.

The constitution was adopted in 1818, and has since been amended. The governor (who must be thirty years of age), lieutenant-governor, secretary of state, treasurer, and comptroller, are chosen by the people annually. The legislature is called the general assembly. It consists of a senate of twenty-one members, and a house of representatives, which consists of two representatives from each town incorporated before 1785. The chief peculiarity of this constitution is in the narrow limit of the power which the governor possesses. If he disapproves a bill, the two houses may pass them by a majority over his veto. He makes very few important appointments. He may grant a temporary reprieve to a convicted criminal, but cannot pardon him, as the pardoning power is vested in the general assembly. The judges are chosen by the general assembly, and hold office for eight years. The judges of probate are chosen annually by the people. Justices of the peace are chosen biennially by the people of the town in which they reside. Judicial officers are not retained after the age of seventy years. The duty of worship of a Supreme Being is acknowledged, but entire liberty of conscience as to the manner of it permitted.

The early history of this State is somewhat intricate. The first settlement by white men was made in 1632, from Plymouth; but the Dutch claimed the country as a part of the New Netherlands,

and purchased of the Indians the land on which Hartford now stands, and built there a trading-house and fort in 1633. The same year an expedition from the colony at Plymouth sailed up the Connecticut, and, passing by the Dutch fort, built their trading-house in Windsor. In the mean time several companies from Massachusetts prepared to settle along the Connecticut, and went there in the year immediately succeeding. During this same period, John Winthrop, under a commission from the patentees, Lord Say and Seal, Lord Brook, and others, built a fort at the mouth of the Connecticut River. In the midst of these conflicting claims and settlements the Pequot Indians attacked the colonists with great violence; but in the short war which followed, this tribe was almost annihilated. New Haven was settled in 1638, by a company which consisted mostly of Londoners, who at home had been traders, and brought with them much wealth. Not until 1665 were the colonies of Connecticut and New Haven united. But a charter had been granted by Charles I. in 1662. This charter continued in force until the declaration of independence in 1776, and then continued to be the constitution of the State until 1818, when the present constitution was formed.

**There are many manufactories, most of which are of moderate extent; but the manufacture of rifles, revolvers, and other fire-arms, is very large; and in other establishments, axes, carriages, and agricultural and mechanical implements, are made in great quantities.**

**The commerce of the State is not large, and is mainly carried on through New York. From New London and Stonington whaling expeditions were formerly fitted out in great numbers; but this business has of late years much declined.**

#### NEW YORK.

**This great State is bounded north by Canada and Lake Ontario, east by Vermont, Massachusetts, Connecticut, and the Atlantic, south by the Atlantic, New Jersey, and Pennsylvania, and west by New Jersey, Pennsylvania, Lake Erie, and Canada. It contains 47,000 square miles, or 30,080,000 acres.**

**The constitution was first formed in 1777, and it has been repeatedly amended.**

**The governor and lieutenant-governor, the secretary of state, comptroller, treasurer, and attorney-general, are elected by the people, every two years, by a plurality vote,—the governor and lieutenant-governor on one year, and the other officers on the alternate years. The canal commissioners and inspectors of state prisons are (by statute) elected for three years, one for each year. The canal appraisers are appointed by the governor, with the consent of**

the senate, for three years. The superintendent of public instruction is elected by the legislature for three years. All the judges and justices are elected by the people. There are seven judges of the Court of Appeals, and thirty-three justices of the Supreme Court, so called, although the Court of Appeals has power to correct and reverse the proceedings of the Supreme Court. The judges of the Court of Appeals and Supreme Court hold office for fourteen years. The county judges are elected for six years.

In 1609, **Henry Hudson, an Englishman employed by the Dutch East India Company**, discovered the river which bears his name, up which he sailed near to the site of Albany. Because this land was discovered by a navigator in their employ, it was claimed by Holland, and named the New Netherlands. Many and sometimes bloody were the conflicts between the Dutch settlers and the Indians about them, with the English upon the Connecticut, and with the Swedes upon the Delaware. The English claimed the New Netherlands as a part of Virginia, founding their claim upon the earlier discovery by Cabot. In 1664 Charles II. granted to his brother, the Duke of York, a charter which included the New Netherlands and a part of the territory which had been previously granted to Connecticut, Massachusetts, and New Hampshire. The duke proceeded at once to take possession of the territory, and in the same year an English force reached New Amsterdam and demanded its surrender. This demand was complied with from utter inability to resist, and the whole country passed at once into the possession of the English, quietly and permanently; for although New York was afterwards for a short time held by the Dutch, it was almost immediately again surrendered to the English. Names were changed. New Amsterdam became New York, which name was also applied to the whole territory, and Fort Orange became Albany. The earliest government of the English was exceedingly obnoxious to the people; and the revolution which placed William and Mary on the throne of England in 1689 was regarded by the people as full of promise for them; but large estates had been granted, and manorial rights acquired which continued in force for nearly two centuries, and were then with some difficulty removed.

The territory about the city of New York was almost constantly involved in the hostilities which belonged to the War of Independence; and the Revolution, in fact, closed by the evacuation of New York by the British in 1783. During the first years after our independence, this State grew, if not slowly, at least no faster than its sister States. But the great Erie Canal, first proposed in 1800, actually begun in 1817, and finished in 1825, which brings the water



of Lake Erie to the Hudson in an almost straight line through the centre of the State, began at once to give to the State the prominence and prosperity which it has ever since enjoyed. The city of New York became the commercial head of the Western continent. About six-sevenths of the tariff revenue of the whole country are collected at the custom-house of New York City. Numerous railways covering the State help to bring to her the traffic of the whole country.

The manufactures of the State are various and extensive, and the list of them embraces almost all the important works of human production.

Its agriculture does not fall behind its commerce or its manufactures. Its climate is said to possess a wider range than that of any other State in the Union. But away from the mountains and its northernmost regions, it is generally mild; and through the greater part of the State both soil and climate are well adapted to the cultivation of the principal crops and fruits of the temperate zone. The lands along its rivers, especially the Mohawk, are singularly rich; or were so, until long cultivation without the restorative help of manures had produced its inevitable effect, and lessened the production of wheat to the acre one-half, and this is their principal crop.

#### NEW JERSEY.

This State is bounded north and north-east by the State of New York, east by New York Bay and the Atlantic Ocean, south by the Atlantic and Delaware Bay, west by Delaware and Pennsylvania. It contains 8,320 square miles, or 5,331,000 acres.

It adopted a State constitution in 1776. It has since been amended. The governor is chosen for three years, by a plurality vote, and cannot be chosen for the term next succeeding, and must have been twenty years a citizen of the United States. There is no lieutenant-governor. The secretary of state is appointed by the governor, with the consent of the senate, for five years. The treasurer is elected by the legislature for one year. The superintendent of schools is appointed by the trustees of the school fund for two years. The senate consists of twenty-one members, who are elected for three years, one-third each year. The house of representatives consists of sixty members, who are elected each year. The Supreme Court consists of seven justices, who hold office for seven years, and are appointed by the governor. The chancellor is also appointed by the governor, and for the same period. The Court of Errors and Appeals consists of the chancellor, the justices of the Supreme Court, and six other judges, whom the governor appoints for six years, one judge going out of office each year.

The earliest colony upon this territory was founded probably about 1620, by the Dutch of New Amsterdam, who claimed the whole country as a part of the New Netherlands. Small colonies of Swedes and Finns settled in the same region. The Dutch and Swedes drove out the English colonists, and afterwards the Dutch drove out the Swedes. In 1664, Charles II., of England, granted all the territory between the Delaware and Connecticut Rivers to his brother, the Duke of York, who sent out an expedition to take possession of it. New Amsterdam yielded without resistance, and the New Jersey settlements immediately submitted. A patent was then granted by the first English governor to immigrants from Long Island and New England, and many settlements were made. In the following years there were many questions and some conflicts as to whether the proprietors or the king held the title. They were at length settled, the colony being divided into East Jersey and West Jersey. In 1682 the whole territory was bought by William Penn and eleven other Quakers. They opened it as an asylum for the persecuted believers of his creed, and for a time it enjoyed much prosperity; but in 1702 the proprietors surrendered the right of government to the crown, and so it remained until the Revolution.

As a whole, this State is well adapted, both by soil and climate, for agriculture. The central region is a vast market garden, which supplies New York and Philadelphia, and even more distant cities.

Its manufactures have of late been considerably developed, and its manufacturing establishments are numerous, varied, and successful. Its fisheries, especially of shad and oysters, are very profitable. Its commerce with foreign countries is considerable, but is mainly conducted through New York or Philadelphia. Its mining industries are very important and valuable, especially in iron, marls, and zinc. Indeed, it is said that its zinc mines yield more than all the zinc mines of Great Britain, and much more than half the zinc products of the United States.

#### PENNSYLVANIA.

This State occupies nearly the centre of the thirteen original States, and from this position as well as from its importance, is often called the Key-stone State. It occupies a nearly perfect parallelogram, bounded north by Lake Erie and New York, south by Delaware and Maryland, west by West Virginia and Ohio, and east by New York and New Jersey. It contains about 46,000 square miles, or 29,440,000 acres.

Its constitution has recently been amended. The governor and lieutenant-governor are elected for four years, by a plurality vote, neither being eligible for the next succeeding term. The secretary of the commonwealth and attorney-general are appointed by the governor during pleasure; and a superintendent of public instruction is appointed by him for four years. The secretary of internal affairs for four years, the auditor-general for three years, and the State treasurer for two years, are elected by the people. The two last named cannot hold the same office for two consecutive terms.

The judges are elected by the people: those of the Supreme Court for twenty-one years, and they are not eligible for a second term; those of the inferior courts for ten and five years. Justices of the peace are elected for five years.

The senate and house of representatives constitute the general assembly. Senators, fifty in number, are chosen for four years. Representatives are apportioned on the population of the counties by a ratio obtained by dividing the State by two hundred. Every county containing less than five full ratios has one representative for a full ratio, and one more if the surplus is more than half a ratio. Every county containing five ratios or more has one representative for a full ratio. The representatives are chosen for two years.

An elected officer must swear that he neither paid money nor any thing of value to procure his nomination or election, and that he will not accept extra official pay for performing or non-performing his official duty; false swearing in this respect is punishable as perjury, and any candidate thus or otherwise violating an election law shall be forever disqualified from holding office. Any woman twenty-one years old is eligible to any school office. No State debt shall ever be created except to supply casual deficiencies in the revenue, and then not to exceed one million of dollars, or to repel invasion, suppress insurrection, for defence in time of war, or to pay existing debt.

The history of this great State is exceedingly peculiar. Early settlements by Swedes and Finns were made upon the Delaware; then the Dutch acquired the dominion, and soon afterwards the English. But in 1681 a grant from Charles II. to William Penn included territory nominally at least covered by the ill-defined grants already made to Virginia, Maryland, and the colonies of New England. But the boundary between Pennsylvania and Maryland was finally settled by the famous Mason and Dixon's line. This line was, in the days of slavery, repeatedly referred to, because it was the dividing line between the free and the slave States of the original thirteen. Charles Mason and Jeremiah Dixon, Englishmen distin-

guished for their knowledge of mathematics and astronomy, began in 1763 the line they were employed to lay down, and ended it at a point two hundred and forty-four miles from the Delaware, where they were stopped by the Indians, who ordered that the survey should go no farther. The commissioners yielded to the prohibition, and returned to Philadelphia. Stones were sent from England, and planted at every mile. This line closed a border war which had been kept up at intervals for almost a century. William Penn, the Quaker, founded his colony upon a perfectly peaceful policy. His justice, integrity, and firmness deeply impressed the savages; and the consequence was that while we read in the history of the other original States much about wars with the Indians, and various disasters, Pennsylvania enjoyed an unbroken peace with them, until the beginning of the revolutionary war.

What is now Delaware was for a long time a part of Pennsylvania, and constituted the "Lower Counties." Philadelphia grew rapidly in population and prosperity, and from its importance and central position was the seat of the Continental Congress and of the general government, until 1800. Independence was proclaimed there; and the whole colony bore a decided and important part in the war of the Revolution. The names of Brandywine, Germantown, and Valley Forge will never be forgotten. In 1750 a large German immigration began, and great numbers of that people mingled with the Friends, or Quakers, who were there settled; and afterwards many persons from the North of Ireland, of Scotch origin, came into the colony, and were spread widely over it.

This large State is, through a great part of its territory, successfully cultivated. Its foreign commerce is very large, a good part of it being carried on through the port of New York. Its internal trade over its numerous railroads and canals has reached a great extent, and is now rapidly growing. But perhaps the State is most remarkable for its mining industries. The deposits of coal within its limits, especially anthracite, are of an enormous extent, and generally very accessible. With the coal beds are mingled beds of iron ore, which are very largely worked; and it may be said, indeed, that for both coal and iron the State of Pennsylvania is one of the most productive countries in the world. Petroleum and salt are also obtained in large quantities.

#### DELAWARE.

This State is bounded north by Pennsylvania, west and south by Maryland, and east by Delaware Bay and the Atlantic. It contains 2,120 square miles, or 1,306,800 acres.

By the constitution of Delaware the governor must be thirty years of age, and have been a citizen and inhabitant of the United States twelve years next before the first meeting of the legislature after his election, and the last six of that term an inhabitant of the State. He is chosen for four years. The secretary of state is appointed by the governor for the same period. The attorney-general is appointed by the governor, and holds office five years. The state treasurer and auditor are chosen by the legislature for two years. The senators and representatives are appointed according to population. The number of senators shall never be more than one-half, nor less than one-third, the number of representatives. The judges are appointed by the governor, and hold office during good behavior.

Delaware was first settled by Swedes and Finns in 1638, and was successively held by the Dutch in the New Netherlands, and by the English of New York; afterwards by Lord Baltimore, under a grant from the King of England. Then William Penn included it with Pennsylvania, until in 1703 the territory now constituting the State of Delaware obtained liberty to separate, and was allowed a distinct assembly, but not a governor. The proprietors of Pennsylvania, however, retained all their rights until the Revolution began, and the same governor presided over Pennsylvania and Delaware. In 1776 the inhabitants declared themselves an independent State, and framed a constitution. This was superseded in 1792 by another constitution, which has been frequently amended.

Both the climate and soil are favorable to agriculture. The flouring mills on the Brandywine are very important. At Wilmington there are extensive manufactories of steam machinery, railroad cars, and steamers; and many vessels of various descriptions are built and fitted out. The commerce of the State is not large.

#### MARYLAND.

This State is bounded north by Pennsylvania, east by Delaware and the Atlantic Ocean, south and south-west and west by Virginia and West Virginia. It contains 11,124 square miles, or 7,119,360 acres.

By the constitution of Maryland, the governor is chosen by a plurality of votes, for a period of four years. There is no lieutenant-governor. The senate consists of three members from the city of Baltimore and one senator from each county in the State, who are chosen for four years. The house of delegates consists at present of eighty members. It is founded upon population, and may vary in number. The secretary of state, the treasurer, and the comptroller are

appointed by the governor. The judges of the Court of Appeals and the Circuit Courts are elected by the people for fifteen years, or until they shall reach the age of seventy years. Other judges for a less period; and justices of the peace for two years. Sheriffs and constables are chosen for two years. County attorneys are chosen in each county by the people for four years.

The first settlement of Maryland was made by a party from Virginia in 1631; the next year a charter was granted to Lord Baltimore by Charles I., and under this the colony was permanently established. The first colonists were nearly all Roman Catholics, as was Lord Baltimore, the proprietary. In 1642, a company of Puritans from Virginia, who had been expelled from that State for their religious opinions, settled at what is now Annapolis, in Maryland, and before long endeavored to resist Lord Baltimore, the proprietary. The two parties maintained a conflict with each other, with varying success; and in 1649, when a governor appointed by the proprietary had recovered possession, an act was passed introducing a principle which had never before been recognized as a public law in the history of mankind, but which is now the law, not only in Maryland, but through the whole country. For by this act it was declared that Christians of all sects might worship God according to the dictates of their own conscience, and make a public profession of their faith in safety. The opposite parties, Puritans and Catholics, continued the conflict, which was attended at times by actual hostilities. King William, when he came to the throne of England in 1688, assumed the government of the colony, in disregard of the rights of all parties among the colonists. But in 1714, the Lord Baltimore of that day having been educated as a Protestant, his rights and authority as proprietary were restored to him, and were not again disputed until the Revolution. Annapolis was the seat of government, Baltimore not being laid out until 1729; and it was to the Congress assembled at Annapolis that Washington resigned his commission in 1783.

In agriculture and its products this State holds a respectable but not an eminent position. Much the same thing may be said of its manufactures; although it has many prosperous manufacturing establishments, of which the flouring-mills are the most numerous. Its commerce is very large, including both its foreign and coasting trade, Baltimore, the principal port of the State, having a great amount of tonnage, and an extensive and varied commerce.

## VIRGINIA.

This State is bounded north by Maryland, east by Maryland and the Atlantic, south by North Carolina and Tennessee, and west by Kentucky and West Virginia. It contains about 38,352 square miles, or 24,545,280 acres.

By its constitution, a governor, lieutenant-governor, and attorney-general are elected by the people for four years; and the governor cannot be elected for two consecutive terms. No person of foreign birth is eligible to the office of governor, unless he has been a citizen of the United States for ten years next preceding his election. The governor must be thirty years of age, and have been a resident of the State for three years next preceding his election. The secretary, treasurer, auditor, and register of the land-office are elected by the general assembly of the State, for two years. The three members of the board of public works are elected by the people for six years, one leaving office every two years. The senate consists of fifty members, elected for four years; and the house of delegates of one hundred and fifty-two members, elected biennially: the districts from which the delegates are chosen being apportioned on the basis of population, and those from which the senators are elected are apportioned on the basis of publication and taxation combined. The sessions of the legislature are biennial. No session can continue more than ninety days, unless three-fifths of all the members vote therefor; and cannot be, in any case, extended more than thirty days in addition to the ninety. The judges are elected by the people: in the Circuit Courts for eight years, and in the County Courts for four years. Votes are given not by ballot, but *viva voce*.

Virginia was the first colony settled by the English in America. Jamestown, on the northern bank of James River, was founded in 1607, by about one hundred colonists, sent out by a London company. At this time almost the whole sea-coast of North America was called Virginia; and to this company James I. granted South Virginia, and the territory north of it was called North Virginia. These colonists were not all of good character; but a bright spot in the story comes from the courage, ability, and energy of the celebrated Captain John Smith, who is regarded as the founder of Virginia. This man had passed through the most romantic experiences in Europe; and all are familiar with the still more romantic story of Pocahontas, the Indian princess, who saved his life, at the peril of her own, when threatened by her angry father, King Powhatan. Unfortunately the criticism of modern times has reduced this story within very narrow limits. Powhatan was the chief

of a powerful tribe possessing the country, and his daughter, Pocahontas, informed Smith of a plot of her father to destroy him. She often visited the English; and an English captain of a vessel held her as a hostage, while he treated with Powhatan for peace. While on shipboard, an attachment grew up between her and an Englishman named John Rolfe. She was baptized, and they were married in 1613; and peace between the English and the Indians was caused by this marriage, and continued for many years.

There were many successive efforts to people Virginia, which were but imperfectly successful for a considerable time, in part from dissensions among the colonists, and in part from the attacks from the Indians after the death of Powhatan. In 1622 the number of the colonists was reduced from four thousand to two thousand five hundred, by sickness, famine, and Indian murders. After great pecuniary loss, the Virginia Company was dissolved in 1624, and thereafter the colony was in the hands of the king. A more prosperous condition soon began. In 1671 the population amounted to forty thousand, the Indians were completely subdued, and the cultivation of tobacco was found to be extremely profitable. In the matter of education, the colony stood in strange contrast to the New England colonies. There, about the first thing done was to establish schools as soon as possible. But the royal governor of Virginia, writing in 1761, says: "I thank God there are no free schools nor printing, and I hope we shall not have any these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them and libels against the best government. God keep us from both."

The colony continued to prosper, the royal governors being, for the most part, men of high rank. A war with the French broke out in 1754; and George Washington entered the service, accompanied Braddock in his disastrous campaign, and, after that general's defeat in 1755, was placed at the head of the Virginian army. The assumption by the British parliament called forth an opposition in Virginia, as in Massachusetts. At that time the commerce of that colony with Great Britain was larger than that of any other colony. But she did not hesitate to sacrifice it in her determination to resist the oppression of England, and afterwards to maintain the independence of these colonies. This State was, in fact, the earliest to urge an organized confederacy of the States which had been colonies. For many years after the federal constitution Virginia maintained her predominant influence. Four out of the first five presidents were natives of that State, and resided therein; and each of them was re-elected for a second term. Since that time her commerce has mainly consisted of the exports of her agricultural



productions, the most important of which is tobacco. The cultivation of this article has exhausted a large part of her best soils; but not so far that their fertility cannot be restored, as experiments have proved. The cereals are also largely grown, especially in the valleys in the middle and western portions of the State. There are manufactories of cotton and of iron, as well as of flour. A large amount of coal is also produced, and an almost equal value of salt. The oyster-beds in the Chesapeake Bay are exceedingly productive and valuable.

#### NORTH CAROLINA.

**This State is bounded north by Virginia, west by Tennessee, south by Georgia, South Carolina, and the Atlantic, and east by the Atlantic. It contains about 50,000 square miles or, 32,000,000 acres.**

**The constitution now in force was adopted in 1868. The governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney-general, superintendent of public instruction, and superintendent of public works, are elected by the people, and hold office for four years. The senate consists of fifty members, and, with the representatives, one hundred and twenty in number, are chosen biennially; and are apportioned from among the counties, according to population. The judges are elected by the people, those of the Supreme Court and the Superior Courts for eight years. A solicitor is chosen by the people for each judicial district, and holds office for four years. In each county a sheriff and coroner are elected by the people, each for two years.**

**There was an attempt at a settlement on an island between Pamlico and Albemarle Sounds as early as in 1585, by a party sent out by Sir Walter Raleigh, which returned the next year. Other colonies sent out by Raleigh disappeared, and were supposed to have been slain by the Indians. It was not until the middle of the next century that a successful colonization was effected. The famous John Locke prepared a plan of government for the whole province, which then included what is now South Carolina. This plan was no doubt extremely philosophical; but a few years' experience proved that it was so complicated and unpractical that it could not be carried into effect. But the population grew, though not very rapidly. The colony passed through divers vicissitudes and conflicts, arising in part from dissensions among the colonists, and in part from the attacks of the savages, which have to be mentioned in the history of most of the original States.**

**Not long before the Revolution its population gained a considerable accession from a colony of Presbyterians from the north of**

Ireland, from a company of Moravians, and from a party of Highlanders. In the years immediately preceding the War of Independence the patriots were much embarrassed and impeded by the loyalists, who were numerous and earnest; but they prevailed at length, and the State joined the confederacy. The Constitution of the United States was rejected by this State in 1788, but was adopted the next year.

The climate, the soil, and the products of this State are exceedingly varied; nor can it be said that commerce, manufactures, and mining are extensive, although all are carried on to some extent, and are now said to give indications of growth and prosperity. A most important branch of the manufacture of the State is that of turpentine, tar, and rosin, of which immense quantities are exported, a very large extent of territory in the State being covered by the species of pine which yield these products.

#### SOUTH CAROLINA.

This State is bounded north by North Carolina, east and south-east by the Atlantic, west and south-west by Georgia. It contains 34,000 square miles, or 21,760,000 acres.

The constitution now in force was adopted in 1868. The governor and lieutenant-governor are elected biennially by the people, and must each be thirty years old, and have resided in the State two years. The comptroller-general, treasurer, and secretary of state, are elected for four years. The senate consists of thirty-one persons, one member from each county or district, except the county of Charleston, which sends two. The house of representatives consists of one hundred and twenty-four members, who are apportioned among the counties according to population. Senators must be twenty-five years old, and hold office for four years, one-half being chosen every second year. Representatives must be twenty-one years of age, and hold office for two years. The judges of the Supreme Court and of the Circuit Courts are elected by the general assembly, the former holding office for six years and the latter four years. The probate judges are elected by the people in each county, for two years.

This constitution declares that every citizen of this State owes paramount allegiance to the constitution and government of the United States, and no law or ordinance of this State in contravention or subversion thereof can have any binding force. It also provides that no person shall be eligible for the office of governor who denies the existence of the Supreme Being.

The first attempt at peaceful colonization in South Carolina was

made by French Huguenots, in 1562; but it failed, the colonists returning to France; nor was there a permanent settlement made until English colonists settled at Port Royal, in 1670. They removed in 1680 to Charleston. Not long after, a large number of French Huguenots, followed by Swiss, Irish, and German emigrants, settled in the colony. It suffered heavily from the Indians, and from some conflicts with the Spanish settlements in Florida. During the revolutionary war many important battles were fought within this State, with varying success; and during 1780, and most of 1781, the British held the territory.

There are some successful manufacturing establishments in the State, but it is essentially agricultural. Very little of its soil is waste land, both land and climate being excellently adapted to cotton, rice, and tobacco, while wheat is very little grown. All the other products proper to a warm climate are raised in great quantities. This State suffered more perhaps than any other from the late war, and from the changes resulting therefrom. Nor can it be said to be now in a prosperous condition. The commerce of Charleston was very large before the war, and appears to be now reviving. Cotton and rice were the most important productions of the State, and are so now.

#### GEORGIA.

This State is bounded north by Tennessee and North Carolina, west by Alabama and Florida, south by Florida, east by the Atlantic, and north-east by the Savannah River, by which this State is separated from South Carolina. It contains 58,000 square miles, or 37,120,000 acres.

The constitution now in force was adopted in 1868. The governor, secretary of state, treasurer, comptroller-general, and surveyor-general, are elected by the general assembly, and hold office for four years. The senate consists of forty-four members, who hold office for four years, one-half of whom are elected every two years. The house of representatives consists of one hundred and seventy-five members, who hold office for two years. The judges of the Supreme and Superior Courts, and of the District Courts, the attorney-general, the solicitor-general, and the district attorneys, are appointed by the governor, with the consent of the senate. Justices of the peace are elected by the people in their respective districts. The judges of the Supreme Court hold office for twelve years, of the Superior Court eight years, and of the District Courts four years. The Court of Ordinary (or Probate) consists of an ordinary from each county, chosen by the people, and holding office four years.

Justices of the peace hold office four years. The district attorneys hold their office for the same period as the district judges.

Georgia was the latest settled of the thirteen original States. The territory was comprehended within the charter of Carolina, but was claimed by Spain as a part of Florida. In 1732 George II. made a grant of it to a corporation called "Trustees for settling the Colony of Georgia." Previous to that time it was a mere wilderness, imperfectly explored, and without any settlement. General Oglethorp was in charge of the first immigration. The progress of the colony was at first slow. The restrictions on the land-grants annoyed the colonists, and many of them removed to Carolina. These restrictions were removed, and fifty acres were offered to each settler in fee-simple; and the colony soon received large accessions, most of the immigrants coming from Scotland or from Germany. In 1739 war broke out between England and Spain, and Florida was unsuccessfully invaded by troops from Georgia and South Carolina. Immediately afterwards Georgia was invaded by the Spanish, with no better success. Internal dissensions then prevailed, and the trustees concluded to surrender their charter to the king. In 1752 Georgia passed under the government of the crown; and the same rules were established as to the possession of lands and slaves that existed in the other colonies. In 1763 the King of England annexed to Georgia, by his proclamation, all the lands between the rivers Altamaha and St. Mary's. In the twenty-three years which followed the assumption of the territory by the crown, its population was increased eightfold, and its commerce in still greater proportion. When the war of the Revolution broke out, this colony joined the others at once, and remained steadfast to the cause of independence, although the British troops overran most of its settled territory, and drove many of the inhabitants from their homes.

After the independence of this country was established, Georgia suffered very much from the Creeks and Cherokees. The charter of Georgia extended to the Pacific, like those of many of the colonies; but in 1791 a treaty was formed with those Indians, by which the western boundaries to the State were defined. Subsequently the Indians ceded a large territory to the United States; and Georgia ceded to the United States all its claims to the territory west of its present limits, where are now Alabama and Mississippi. Difficulties between the State and the Indians in the western part of it continued, and caused great difficulties, until in 1838 the national government removed the Indians to the Indian Territory, when Georgia came into undisturbed possession of the lands which they had occupied, which now form the south-west counties of the State. Previ-

ous to the late war Georgia was almost exclusively a cotton-growing State, the sea-island cotton growing upon islands on its coast and on some parts of the main-land being of especial value. In this State was also raised a large quantity of rice; and its large production of all these articles gave to it a valuable commerce. Gold occurs almost everywhere in the State, but not in quantities which have as yet permitted very valuable working.

Since the termination of the war many valuable manufactories, especially of cotton, have been established in the State; and their success gives reason to believe that Georgia will eventually hold a high place among the manufacturing States.

We have now completed the list of the thirteen original States. The national constitution provided that the ratification of nine States should be sufficient for the establishment of the constitution. Eleven States ratified the same before it went into operation in March, 1789. The other two States did not ratify the constitution until afterwards: North Carolina in November, 1789, and Rhode Island in May, 1790. These two States were not, however, treated as new States, requiring special acts of admission; but their senators and representatives were admitted to Congress, as those of the other States were. It was, however, thought necessary to extend to them, by special acts, the laws of the United States passed previously. Thereafter no new States could be admitted, unless under the clause of the constitution providing for their admission. The practice has generally been that the people of a territory, desiring to become a State, formed a constitution, and submitted the same to Congress; and only when Congress approved of that constitution was the State admitted. The mode of admission is not, however, regulated by the constitution, and is therefore a matter of law only, and of course is subject to the pleasure of Congress. There has been much diversity in the method of admission. We have treated of the thirteen States in a geographical order. The remaining twenty-four States will be presented in the order in which they were received into the Union.

#### VERMONT.

Vermont was admitted in 1791. It is bounded north by Lower Canada, east by New Hampshire, south by Massachusetts, and west by New York and Lake Champlain. It contains 10,212 square miles, or 6,535,680 acres.

By its constitution, the governor, lieutenant-governor, and treasurer are elected by the people annually; no one being eligible to

the office of governor or lieutenant-governor unless he has resided in the State four years next preceding the day of his election. The secretary of state and auditor of accounts are elected by the legislature. The senate consists of thirty members, chosen from the senatorial districts, and the house of representatives of two hundred and thirty-nine members. The judges are elected annually by the legislature, and each judge of the Supreme Court has full power as chancellor. A very peculiar provision, wherein this State differs from all the others, relates to its council of censors. This council consists of thirteen persons, chosen by the people every seven years, and holding office one year. Their functions seem to be imitated from those of the old Roman censors. They have less power to do any thing; but they must inquire into the doings of all the officers of government, executive and legislative, and ascertain whether the constitution has been duly regarded. They must inquire also whether the public taxes have been justly imposed, and whether they have been duly collected in all parts of the State, and whether the funds of the State have been properly disposed of. For these purposes they may send for persons and papers; they may pass public censures; they may order impeachments; and may advise the legislature to repeal laws which the censors think unconstitutional. They may call a convention to amend the constitution, to meet within two years after their sitting.

**Vermont was discovered and in part explored by French officers in 1609.** But the first white settlement in the State was made in 1724, in what is now Brattleborough, a site then regarded as within the limits of Massachusetts. Immigration did not begin to any extent until about a dozen years before the revolutionary war. The Governor of New Hampshire claimed the territory under the charter of that colony, the country west of the Connecticut being known at that time only by the name of the New Hampshire grants. In 1763 the Governor of New York claimed the territory under the grants from Charles II. to the Duke of York. The Governor of New Hampshire resisted his claim. The King of England was appealed to, and granted to New York jurisdiction to the Connecticut River. The Governor of New Hampshire yielded to this. The government of New York then endeavored to dispossess the settlers from their lands. Armed resistance under Ethan Allen and other such men made the efforts of New York ineffectual. If an officer undertook, under process of law, to eject a settler, he was stripped, tied to a tree, and severely whipped with beechen rods. This was called setting a "beech seal" upon him; and the effect was, that no officers could be induced to serve writs. The strife continued in various ways for some ten years. The Governor of New York issued a

proclamation commanding eight of the leaders of this resistance to surrender themselves, and offered a large reward for the capture of each of them. Whereupon these leaders replied by offering a reward for the capture of the Attorney-General of New York. Then the revolutionary war broke out, and gave the people of both colonies something else to attend to. In 1776 the settlers in Vermont petitioned the provincial congress for admission into the confederacy; but their petition was opposed by New York, and they withdrew it. The next year Vermont declared her independence, and again asked to be admitted into the confederacy. Congress delayed until 1781, when it offered to admit Vermont, but with a large diminution of her boundaries. This the people refused to accept, and remained outside the Union. In 1790 New York offered to relinquish all her claims to the territory of, or jurisdiction over, the State, for thirty thousand dollars. This offer Vermont accepted. During the war Vermont was not in the confederacy, and had no representatives in their congress; but her sons fought bravely for independence, and were engaged in some of the most important battles and expeditions of the war. In the war of 1812 they were active in the battle of Plattsburgh, and in the naval conflict on Lake Champlain. In 1837, when a rebellion broke out in Canada, the inhabitants of the northern counties of Vermont sympathized therewith; and a large number of them passed over the line into Canada, but dispersed and retreated before a British military force, the United States authorities commanding them to return and give up their arms.

Vermont has some successful manufactories, and carries on some commerce through Burlington on Lake Champlain, but is essentially an agricultural State. Her mountains, from which she derives her name, yield large quantities of excellent slate and marble.

#### KENTUCKY.

This State was admitted into the Union in 1792. It is bounded north by Ohio, east by West Virginia and Virginia, south by Tennessee, west by Missouri and Illinois, and north-west by Indiana. It contains 37,680 square miles, or 24,115,200 acres.

By the constitution the governor and lieutenant-governor are chosen by the people, by a plurality vote, for the term of four years. The governor cannot be chosen for the term succeeding his election. If the office of governor be vacant in the first half of the term, it is filled by a new election; if during the last half, the lieutenant-governor becomes acting governor; and if he dies or is disabled, the speaker of the senate. The secretary of state is appointed by the governor, with the consent of the senate. The treasurer is elected

by the people every two years. Members of the senate are chosen for four years; they are thirty-eight in number. The house of representatives consists of one hundred members, and hold office two years. Judges of the Court of Appeals are elected by districts for eight years, one being chosen every second year. The judge who has the shortest term to serve is chief justice. The Circuit Court judges are elected for six years, and justices of the peace for four years.

The exploration of the territory now constituting Kentucky began about 1770; and in 1777 it was a county of Virginia, and the first court was held there. Although it began at a comparatively late period, the settlement increased very rapidly, the immigration being large and constant. The name "Kentucky" is said to mean, in the Indian language, "the dark and bloody ground;" and it was so called because savage warfare had existed there for many ages. Nor did the savages permit the occupation of their land without resistance. Conflicts between them and the immigrants were frequent and severe. It was believed that they could protect themselves better if separated from Virginia; and a movement in that direction began as early as in 1775. Successive conventions were held; and at length, in 1786, the legislature of Virginia passed an act of separation. It was not, however, accepted by the people of Kentucky, nor was the separation then completed. The difficulty in the way was a strange one, and peculiar to the people of this State; obstructing no other on their way into the Union. This difficulty was, the inclination of a large part of the people to have an independent nationality. This desire was inflamed by false reports, and, it is said, by clandestine efforts on the part of Spain, who at that time held possession of the mouth of the Mississippi. At length, however, but not until a seventh convention on the subject was held, the desire to be admitted into the Union prevailed. But it was not till after two more conventions that Kentucky became, in 1790, a separate territory, and was admitted into the Union in 1792. Troubles still continued; and from time to time the idea of independence was again agitated. The navigation of the Mississippi was of vast importance to Kentucky; and not until this point was secured by the purchase of Louisiana by the United States in 1803 were these troubles entirely composed. Since that time the prosperity of the State has constantly advanced, and the agricultural and other industries within its limits are well developed. The State is, indeed, eminently an agricultural and grazing country. It exports large amounts of tobacco, and raises stock in great variety and quantity. In many parts of the State the pastures support the stock nearly the year round. Coal is found in great abundance, and iron



and lead are also found in many parts, and there are many salt-wells. It has no foreign commerce, but carries on an active trade with New Orleans and various ports on the Ohio and Mississippi.

#### TENNESSEE.

**This State is bounded north by Kentucky and Virginia, south-east by North Carolina, south by Georgia, Alabama, and Mississippi, and west by Arkansas and Missouri. It contains 45,600 square miles, or 29,384,000 acres.**

**The governor is elected by the people for two years, by a plurality vote. The secretary of state, treasurer, comptroller, and attorney-general, are chosen by the general assembly. The senators and representatives are elected for two years. Their number depends on population: the representatives are not to exceed seventy-five, until the population of the State shall be one million and a half, and shall never be more than ninety-five; the senators shall not exceed one-third the number of representatives. The sessions of the legislature are biennial. The judges are elected by the people, and hold office for eight years.**

**It is believed that the spot where Memphis now stands was visited in 1550 by De Soto, the Spanish explorer, who discovered the Mississippi. But there was no settlement of the territory by white persons for more than two centuries. A settlement was attempted by a party of North Carolinians in 1754; but they were driven back by the Indians. Two years afterwards the first permanent settlement was made; and this was the first settlement by persons of English descent south of Pennsylvania and west of the Alleghanies. The conflicts with the Indians were constant and bloody. At length the savages were sufficiently subdued to remain quiet. During the war of the Revolution, and afterwards, until 1784, this territory formed a part of North Carolina. In 1785 the State of Franklin was organized, the people having become dissatisfied with the government of North Carolina. But the new State was again united with North Carolina in 1788. The next year that State ceded the territory to the general government, and in the following year it, with Kentucky, was organized with the territory of the United States south of Ohio. In 1794 Tennessee was made a distinct territory, and in 1796 was admitted into the Union.**

**The soil and climate of Tennessee are excellently adapted to the raising of stock, and the productions of the cereals, and of tobacco, which is mainly produced in its middle region. The western part of the State is well adapted to cotton. Iron ore is found, of great excellence and of great abundance; coal, copper, and nitre are also**

found, in quality and quantity sufficient to repay the working. In the eastern part of the State there is abundant water-power for manufactures; but it is not yet largely utilized.

#### OHIO.

Ohio is bounded north by Michigan and Lake Erie, east by Pennsylvania, Virginia, and West Virginia, south by West Virginia and Kentucky, and west by Indiana. It contains 39,964 square miles, or 25,576,960 acres.

The governor, lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general, are chosen by the people. The auditor for four years, the others for two years. The judges are chosen by the people, those of the Supreme Court and Court of Common Pleas for five years. The senators and representatives are elected biennially, and hold office two years.

The first explorers of this territory were Frenchmen, whose object was to trade with the Indians, but not to settle in the country; they established, however, trading posts. The English claimed the territory, under a grant from their king; and from these conflicting claims a war broke out, which we have spoken of in our account of Virginia. The French kept possession of the country until it was surrendered to England by the treaty with France in 1763. Ohio was formed from the North-west Territory, from which many other States were subsequently formed. It is necessary, therefore, to give some account of this territory.

#### *The North-west Territory.*

At the time when the United States first formed a confederation, great difficulties arose from the claims of different States to the vast territory in the west, which was then for the most part unexplored and uninhabited, except by Indians; some of the States holding on to rights given them as colonists, and defining their territories by the terms of grants to the colonies; some of them by these grants extended across the continent to the Pacific, while others went as far as the Mississippi. But there were others of the original States, with limited boundaries defining their territory, and terminating it much nearer the Atlantic coast. In other words, some of the States had, so far as those grants could give it, a claim to a vast extent of the western territory, while others of the States could claim no part of it. In 1778 the State of Maryland proposed and insisted that the boundaries of such of the States as claimed to reach the Mississippi or Pacific, should be defined and restrained within much nar-

rower limits, so that the property in the vast western territories might be held by the confederation as the common property of all the States. Different States offered various propositions and resolutions. Those from Delaware, presented to Congress in 1779, express the views of those of the States which had no such wide boundaries so clearly that we copy them here.

"RESOLVED, That this State thinks it necessary, for the peace and safety of the States to be included in the Union, that a moderate extent of limits should be assigned for such of those States as claim to the Mississippi or South Sea; and that the United States, in Congress assembled, should, and ought to have, the power of fixing their western limits."

"RESOLVED, That this State consider themselves justly entitled to a right, in common with the members of the Union, to that extensive tract of country which lies westward of the frontiers of the United States, the property of which was not vested in or granted to individuals at the commencement of the present war. That the same hath been or may be gained from the King of Great Britain, or the native Indians, by the blood and treasure of all, and ought therefore to be a common estate, to be granted out on terms beneficial to the United States."

The State of Virginia was perhaps foremost in the assertion of such claims, and opened a land-office for the sale of her unappropriated lands. Whereupon Congress, in 1779, passed the following act:

"Whereas the appropriation of vacant lands by the several States, during the continuance of the war, will, in the opinion of Congress, be attended with great mischiefs: therefore,

"RESOLVED, That it be earnestly recommended to the State of Virginia to reconsider their late act of assembly for opening their land-office; and that it be recommended to the said State, and all other States similarly circumstanced, to forbear settling or issuing warrants for unappropriated lands, or granting the same, during the continuance of the present war."

Difficulties still continued, and assumed a more threatening character; when the legislature of New York, in 1780, authorized its delegates to limit and restrict the western boundaries of that State, with such reservations of the jurisdiction or the right of soil as they should think proper. The territory to be so ceded or relinquished should be disposed of only by Congress, for the benefit of the United States. And in the same year Congress took into consideration this act, together with the instructions of the legislature of Maryland to its delegates, and the remonstrance of the legislature of Virginia, and after a very forcible and eloquent preamble passed the following resolve:—

"RESOLVED, That copies of the several papers referred to the committee be transmitted, with a copy of the report, to the legislatures of the

several States, and that it be earnestly recommended to those States who have claims to the western country to pass such laws, and give their delegates in Congress such powers as may effectually remove the only obstacle to, a final ratification of the articles of confederation."

**This appeal answered its purpose. The seven States that claimed rights in this territory successively ceded the same to the United States: New York in 1781, Virginia in 1784, Massachusetts in 1785, Connecticut in 1800, South Carolina in 1787, North Carolina in 1790, Georgia in 1802. Some of the States reserved a right to the soil, especially Virginia, which reserved nearly four millions of acres for her State troops; and Connecticut reserved about as many acres near Lake Erie. It was by the sale of this reservation that Connecticut acquired her school fund, which now amounts to over two millions of dollars.**

**In 1787 Congress passed the celebrated and most important "Ordinance for the government of the territory of the United States north-west of the river Ohio." This ordinance is very long, and its provisions are minute and carefully adjusted. At its close, six articles are stated to be "articles" of compact between the original States and the people in the States in the said territory, and are for ever to remain unalterable, unless by common consent. By the first article, religious freedom is secured; by the second article, *habeas corpus*, trial by jury, and the validity of contracts are secured; the third article provides that education shall be encouraged, that good faith shall be observed towards the Indians, and that they shall be treated with justice and humanity; the fourth article provides that the territory and the States formed therein shall remain part of the United States; that the primary disposal of the soil shall belong to Congress exclusively; and that the navigable waters leading into the Mississippi and St. Lawrence should be for ever free and common highways for the citizens of the United States; the fifth article provides for the formation of new States within the territory; the sixth article declares that there shall be neither slavery nor involuntary servitude in the territory. For a few of the immediately succeeding years the territory was much harassed by the attacks of the Indians.**

**The State of Ohio was the first which was carved out of this great territory, and was admitted as a State in 1803. It was followed by many more, as we shall presently see. The State was rapidly settled by immigrants, chiefly from New England; and in its turn it has sent large numbers of immigrants to the States west of it.**

**Coal-fields cover nearly one-third of the whole State. Iron of the finest quality is found in many places. Large quantities of salt**

are manufactured and exported. Its extensive shore line on Lake Erie, with excellent harbors, give it great facilities for commerce, both domestic and foreign, by the lakes and the St. Lawrence. It is covered by an extensive system of railroads. But to its agriculture mainly it owes its great prosperity; nearly all the land of the State being of good quality, and a very large proportion of it, much more than half, being under cultivation.

#### LOUISIANA.

**This State is bounded north by Arkansas, east by Mississippi and the Atlantic, south by the Gulf of Mexico, and west by Texas. It contains 41,255 square miles, or 26,403,200 acres.**

**The governor, lieutenant-governor, secretary of state, auditor, treasurer, are chosen by the people, for four years each. The senators, numbering thirty-six, are elected for four years, one-half every two years; the number of representatives shall never exceed one hundred and twenty, nor be less than ninety, and they are chosen every two years. The judges of the Supreme Court are appointed by the governor, with the consent of the senate, for the term of eight years. They must be citizens of the United States, and have practised law in the State for five years, of which three are next preceding their appointment. The district judges are chosen for the term of four years by the people.**

**Although the Spaniards had navigated the Gulf of Mexico, the Mississippi River was not discovered until the close of the sixteenth century, when the French founded a colony there. In 1717 New Orleans was founded. In 1716, the famous Mississippi bubble, so called, was begun by John Law at Paris. The territory was granted to a company formed by him, under the name of the Mississippi Company. When this bubble burst, as it soon did, to the ruin of many persons, the territory was resumed by the French government, who retained possession of it until 1762, when they ceded it to Spain. In 1800, Napoleon Buonaparte, at that time first consul, induced the government of Spain to cede the territory back to France; but it was held by that country only long enough to enable Napoleon to sell it to the United States, who paid him for the territory fifteen millions of dollars. Napoleon knew that neither he nor Spain could hold the territory against the naval forces of England, with whom war was then impending. By selling it to the United States he placed it in safe hands, and acquired a large sum of money, which was then of great importance to him. President Jefferson made the bargain, doubting very much whether he was not straining, if not overstepping, the limits of the constitution,**

and always spoke of the transaction as one that was justified only by a strict necessity.

By that purchase the United States acquired the whole of the vast territory between the Mississippi and the Pacific, from the Spanish territory on the south to the British territory on the north. From the Louisiana purchase, as it was called, Louisiana was the first State carved out, followed by many other States, as Ohio was the first formed from the North-west Territory. Louisiana was admitted as a State in 1812.

Its capital, New Orleans, is said to be the greatest cotton market in the world. Fourteen States pour their produce into that city, by the Ohio, the Missouri, the Mississippi, and their tributaries; and it has otherwise extensive commerce. As an agricultural State, Louisiana has immense resources. Its soil is almost everywhere adapted to cultivation. The bottom-lands especially are of inexhaustible fertility, and vast herds of cattle and sheep are pastured on the natural meadows of the Opelousas prairies. In one of the islands at the mouth of the Mississippi there is an enormous bed of rock-salt.

#### INDIANA.

This State is bounded north by Lake Michigan and the State of Michigan, east by Ohio, west by Illinois, and south by Kentucky. It contains 33,809 square miles, or 21,637,760 acres.

The governor and lieutenant-governor hold office for four years; the secretary of state, auditor, treasurer, attorney-general, and superintendent of public instruction, hold their office for two years; all are chosen by the people, except the attorney-general, who is elected by the general assembly. The senate shall not exceed fifty, nor the house of representatives one hundred members. Senators are elected for the term of four years, and representatives for two years; the sessions of the legislature taking place biennially. The judges of the Supreme and Circuit Courts are chosen by the people for six years, and of the Court of Common Pleas for four years.

Indiana was originally a part of the North-west Territory. It was probably first settled about 1700, by French Canadians, who seemed to have adopted the habits of the Indians, and lived mainly by hunting. In 1763 the country was ceded to the English, and the settlers were confirmed in their possessions. In 1788 a disastrous Indian war broke out, and continued for three years, when the Indians were for a time subdued. It was organized into a territory in 1800, from which in 1805 the Territory of Michigan was set off, and in 1809 the Territory of Illinois, leaving the Territory of Indiana what the State now is. During all this time the Indians

had continued to be troublesome; and in 1811 a war broke out under Tecumseh, but the Indians were beaten, and sued for peace. When the war broke out with England, in the next year, the Indians again renewed their hostilities; but were again subdued, and a peace was made with them in 1815, and since that time they have not caused any serious trouble. The State was admitted into the Union in 1816.

The wealth of this State consists in its live-stock and in its agricultural productions. Nearly all of its surface is capable of cultivation, and most of it is very fertile. The census of 1860 showed about four times as many farmers in the State as of farm laborers, showing how very large a proportion of the owners of the land then cultivated it with their own labor. The railroads are very extensive, and are well supported. It has vast coal-fields, of excellent quality. It has many forges and furnaces for iron. It exports much lumber, flour, and some wine.

#### MISSISSIPPI.

The State of Mississippi is bounded north by Tennessee, east by Alabama, west by Louisiana and Arkansas, and south by the Gulf of Mexico and Louisiana. It contains 45,156 square miles, or 28,899,840 acres.

The governor must have been a citizen of the United States for twenty years, and a resident of the State for two years; and with the lieutenant-governor is elected for four years. The secretary of state, treasurer, and auditor are elected by the people for four years. The number of representatives shall not be less than one hundred, nor more than one hundred and twenty. The number of senators shall never be less than one-fourth, nor more than one-third of the whole number of representatives, and shall hold office four years. Judges of the Supreme and Circuit Courts are appointed by the governor, and hold office, those of the Supreme Court nine years, and those of the Circuit Courts six years. Justices of the peace hold office two years.

This is another of the States discovered and traversed by De Soto and his companions. This was in 1542. Forty years afterwards, La Salle, a French navigator, coming down from Canada, descended the Illinois River to the Mississippi, and took possession of the adjacent territory for the King of France, giving it the name of Louisiana. The French built forts and planted colonies in the territory. The colony did not prosper. Then the Western Company, which had held possession of it, surrendered its charter, and the King of France opened the trade of the territory to all his subjects.

For a while the colony seemed to prosper; but the Chickasaw Indians attacked it with great violence, and for a time with much success. After a while they were subdued or pacified for a time, and during this period the colony grew in population and in wealth. Again, however, the Indians became hostile, to its great detriment. Through all these fluctuations the colony, on the whole, advanced. The territory was a part of the Louisiana purchase already spoken of in the account of the State of Louisiana. It was formed into a territory by Congress in 1798. When Georgia, in 1802, ceded to the United States her lands south of Tennessee, they were attached to the Territory of Mississippi, which then included what are now the States of Alabama and Mississippi. In 1817 a part of the territory was separated, and organized as a territory under the name of Alabama; and later in the same year the rest of the territory was admitted to the Union, as the State of Mississippi.

This State is one of the principal cotton-producing States. It is said, however, that much more of its land is now given to corn and other crops than formerly. Its direct foreign commerce is small, nor has it many manufacturing establishments. The soil is generally of great fertility, and a large part of the State as a cultivable country has no superior. It is said that the statistics of vitality show that the districts of this State which are sufficiently elevated to be dry are among the healthiest regions in the world.

#### ILLINOIS.

This State is bounded north by Wisconsin and Lake Michigan, east by Indiana, south-east by Kentucky, south and south-west by Missouri, and west by Missouri and Iowa. It contains 55,405 square miles, or 35,459,200 acres.

The governor, lieutenant-governor, secretary of state, and auditor are elected by the people for four years; the treasurer and superintendent of public schools for two years. The senate consists of twenty-five members, who are chosen for four years, half of whom are elected biennially. The house of representatives consists of seventy-five members, until the population of the State amounts to one million, when five members may be added, and five additional members for every five hundred thousand inhabitants thereafter, until the whole number of representatives amounts to one hundred, after which the number shall neither be increased nor diminished. The judges are elected by the people; those of the Supreme Court for nine years, and those of the Circuit Courts for six years, and the county judges for four years.

This territory was first settled by the French, after La Salle and



his companions had discovered it. This was in 1680. Some twenty years afterwards the settlement was described by French writers as in a flourishing condition. Most of the early settlers adopted the mode of life of the Indians about them, and became almost as savage as they were. The colonies of France and England in North America, as they extended, came nearer together, and disputes arose almost inevitably about boundaries which there were so few means of defining with any accuracy. These disputes helped to produce the war between those two nations, which was ended, in fact, by the victory of Wolfe on the plains near Quebec; and in 1763 the dominion of the French ceased over every part of the territory east of the Mississippi. Twenty years afterwards, the peace of 1773 closed the American Revolution, and transferred this territory to the United States; and it was included in the North-west Territory by the ordinance creating that territory in 1787. In 1818 Illinois was admitted as a State into the Union.

This State is, in its soil and situation, peculiarly favorable to agriculture, which has been pursued most successfully. Indeed, it surpasses all the other States in the production of the cereals. Its lead-mines are among the most valuable in the world. Its coal-fields extend over nearly four-fifths of the whole State. Salt is found in its southern counties; and gold, silver, and copper are obtained, but not in large quantities. Its largest city Chicago, on Lake Michigan, at the mouth of the Chicago River, has the only good harbor on the south-western side of the lake. An extensive system of railroads bring to it the productions not only of its own great State, but, through that State, of others lying further west. This, added to its lake commerce, has caused it to grow with an almost unexampled rapidity. It was destroyed in great part by the fire of 1872. Its rapid recovery has manifested both its energy and its resources.

#### ALABAMA.

This State is bounded on the north by Tennessee, on the east by Georgia and Florida, on the south by Florida and the Gulf of Mexico, and on the west by Mississippi. It contains 50,722 square miles, or 32,462,080 acres.

The governor, lieutenant-governor, secretary of state, and treasurer, are chosen by the people, for two years; the attorney-general is elected for four years. The senate must consist of not less than one-fourth, nor more than one-third, of the number of the representatives. Senators are elected from districts, arranged according to population, each district returning one senator. The house of rep-

representatives, of which each county must have at least one member, must not exceed in the whole one hundred members, and they are apportioned according to population. The representatives are elected for two years, and senators for four years; and the last must be twenty-seven years of age. The judges are elected by the people, each being elected for one of the circuits into which the State is divided for that purpose, and after his election must reside in that circuit. The judges of the several courts of this State hold their offices for the term of six years.

The territory of this State was originally a part of Georgia, and in 1798 was included in the Territory of Mississippi. Florida reached at that time, and until 1812, to the French possessions in Louisiana. In that year, when the war with Great Britain broke out, so much of Florida as lay between the Perdido and Pearl Rivers was occupied by the troops of the United States, and was afterwards annexed to the Territory of Mississippi. A bloody war with the Creek Indians broke out in 1813, and continued for nearly two years, until the Creeks were effectually subdued in a series of battles, in which they lost large numbers. A treaty of peace was made with them, by which they surrendered three-quarters of their territory, which was rapidly settled. After the western portion was admitted as the State of Mississippi, in 1817, the eastern portion remained as the Territory of Alabama, until 1819, when it was admitted as a State.

The low river-bottoms of the State, and some parts of the highlands in the north, are hardly cultivable; but much the greater part of the State is excellent and fertile land, and healthy. It has a few manufactures, which are now said to be increasing. Its commerce, through the city of Mobile, is, or certainly was, quite extensive. This city was originally founded by the French, and for many years was the capital of the colony of Louisiana. It is, however, to its very extensive and successful agriculture, and especially to its production of cotton, that this State owes its prosperity.

#### MAINE.

This State is bounded north and north-west by Canada, east by New Brunswick, south and south-east by the Atlantic, and west by New Hampshire. It contains 35,000 square miles, or 22,430,000 acres.

The governor is chosen by the people annually; there is no lieutenant-governor. A council of seven persons, and all other State officers, are chosen by the senate and house of representatives in joint convention. The house of representatives shall consist of not less than one hundred nor more than two hundred

members, to be elected annually. The senate consists of not less than twenty, nor more than thirty-one members, elected at the same time and for the same term as the representatives. The judges are appointed by the governor, with the consent of the council, and hold office for a term of seven years from their respective appointments.

The history of this State is identified with that of Massachusetts for many years. The Plymouth Company of England, in 1607, obtained a grant which included this territory, and sent out to it a colony, which remained only one year. In 1613 a number of French persons landed at Mount Desert, for the purpose of forming a settlement there, from which missionary operations might be conducted. This, however, was soon dispersed by the magistrates of Virginia, who destroyed the settlement.

After various unsuccessful attempts to plant colonies, Sir Ferdinando Gorges obtained from James I. a grant to the Plymouth Company of all the country between latitude 40 and 48 degrees, which grant included the land on which the Pilgrims landed in December of the same year. Gorges endeavored, but without success, to expel both the Plymouth and the Massachusetts colonists. About 1629 the Plymouth Company of England granted out their territory in parcels, as applicants required them; and in a few years the whole coast had been disposed of, and much land on the west, lying between the Merrimack and Piscataqua Rivers. In 1635 the Plymouth Company divided the territory among its members, Gorges receiving the territory between the Piscataqua and the Kennebeck Rivers, of which, four years later, Charles I. gave him a charter, giving to the territory the title of the province of Maine, the origin of which name is unknown. At the death of Gorges, Maine descended to his heirs, and was held under different jurisdictions, in various portions. Massachusetts then put in a claim for the whole province, which was practically allowed. After the restoration of the Stuarts, Charles II. in 1664 sent royal commissioners, with orders to restore the property and authority of the heirs of Gorges. Massachusetts, of course, resisted, and troubles ensued, which Massachusetts ended in 1677 by buying the interests of the claimants for a large sum. It cannot be said that the province, as a whole, prospered. The Indians, aided by the Canada tribes, were continually disturbing the country; many towns were plundered and burned, and many of the settlers slain, or made captives, or driven away to distant places. After the savages were finally subdued, about the middle of the sixteenth century, the province made steady progress in population and in wealth. It was less affected than Massachusetts by the war of the Revolution, but her northern and eastern portions suffered much in the war of 1812. Maine was finally sepa-

rated from Massachusetts in 1820, and admitted as a State into the Union.

**A controversy between the governments of the United States and Great Britain in regard to the boundary between Maine and the British territories at length caused so much excitement and hostility among the population near the disputed territory, that it threatened to produce war between the two countries. But it was finally settled in a satisfactory manner in 1842, by the treaty of Washington.**

**Agriculture is prosecuted in this State with sufficient success in many parts, but its climate is too severe to permit the State to compete in its agriculture with those more favored in this respect. But its immense forests, and numerous and excellent harbors, have given to it peculiar facilities for the business of lumbering and for ship-building, both of which have been carried on very extensively. The exhaustion of the most accessible forests, and the penetration of the railroads into those of the Western States, have diminished its lumber business; and its ship-building has suffered from the general depression of that business. But its manufacture of lumber is still very considerable, and its ship-building is reviving. It has many manufacturing establishments, some of which are very large; and they appear to be increasing rapidly. The commerce of the State is large and growing.**

#### MISSOURI.

**This State is bounded north by Iowa, east by Illinois, Kentucky, and Tennessee, south by Arkansas, and west by Kansas and Nebraska and the Indian Territory. It contains 65,350 square miles, or 41,824,000 acres.**

**The governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney-general, and registrar of lands, are chosen by the people, and hold office for two years; the superintendent of public schools, also chosen by the people, holds office four years. The senators, in number thirty-four, are chosen from senatorial districts for four years, one-half biennially. The number of representatives is ascertained by dividing the whole number of permanent inhabitants of the State by two hundred. They are chosen for two years. The judges are elected by the people: the judges of the Supreme Court by the State, for six years; and the judges of the Circuit Court by their districts, for the same period.**

**This State was included in the Louisiana purchase, and for a long time was commonly called Upper Louisiana. The favorable conditions offered to immigrants by the Spanish government had attracted**

a considerable number of colonists. When the territory was purchased from France in 1803, the lower part of it was organized as the Territory of Orleans, and in 1805 the upper part was organized as the Territory of Louisiana, St. Louis being its capital. In 1812, when the State of Louisiana was admitted into the Union, the name of the territory was changed to Missouri. Purchases were made from the Indians, which extended its western limits. In 1817 its population had grown beyond the number then deemed necessary for a State, and the people of the territory applied to Congress for admission. Thereupon arose a struggle, which continued for three years, and was at one time very violent, upon the question whether slavery should be admitted into the new State. This was settled in 1820, by what is popularly known as the Missouri compromise, the purpose of which was that Missouri should be admitted, with the right of holding slaves; but that no slave States should be thereafter formed from territories lying north of latitude 36° 30'. The State was admitted into the Union in 1821.

**In agriculture, in manufactures, in mining, and in commerce, this State is almost equally distinguished.** Its soil has great variety and excellence. In its southern portion cotton is produced, though not so advantageously as farther south. All the productions of the temperate zone are raised in abundance, and fruits reach great size and excellence. The culture of the grape, and the manufacture of wine, already great, are growing rapidly. The manufactures are principally flour and iron, both very large; her iron deposits being unsurpassed in the world. Silver, copper, manganese, iron, lead, cobalt, nickel, are all found, and a large part of the State is underlaid with excellent and accessible coal. The capital, St. Louis, founded in 1775 as a depot for the fur trade, is now one of the largest cities of the West, and has a very extensive commerce, both water-borne and by railroad, and this is rapidly increasing.

#### ARKANSAS.

**This State is bounded north by Missouri, south by Louisiana and Texas, east by Missouri, Mississippi, and Tennessee, and west by Texas and the Indian Territory.** It contains 52,198 square miles, or 33,406,720 acres.

**The governor, lieutenant-governor, secretary of state, auditor, treasurer, attorney-general, and superintendent of public schools, are chosen by the people for four years.** The senate consists of twenty-six members, chosen for the same period. The house of representatives has eighty-two members, chosen for two years. The

judges of the Supreme Court hold office eight years, and those of the inferior courts six years. They are appointed by the governor, with the consent of the senate. The present constitution of this State was adopted in 1868, and contained a provision that the paramount allegiance of every citizen is due to the federal government, in the exercise of all its constitutional powers, as these may be defined by the Supreme Court of the United States; and that neither the people of this State, nor of any other of the United States, has the power to dissolve their connection therewith, or do any act tending to impair, subvert, or resist the supreme authority of the United States. This State was a portion of the Territory of Louisiana, purchased under the administration of Thomas Jefferson. It remained a part of this territory until 1812, when Louisiana was admitted as a State, and the remainder was organized as the Missouri Territory. This continued until 1821, when Missouri was admitted as a State, and Arkansas was made a territory under that name. This territory was admitted as a State in 1836.

This State has some manufactures, but not many, and is essentially agricultural. Its soil is very various; but most of it is fertile, and the river bottoms exceedingly so. There are large tracts of land which might be brought under culture by drainage, and would then be of inexhaustible fertility. The climate is too cold for the cultivation of sugar; but both soil and climate are well adapted for cotton, of which the production is very large. The State is rich in minerals; iron, coal, zinc, and lead abound in many parts of it, and it is said to contain more of manganese and gypsum, the latter especially, than any other State.

#### MICHIGAN.

This State is bounded north by Lake Superior, east by Lake Huron, Lake Erie, and Lake St. Clair, south by Ohio and Indiana, and west by Lake Michigan. It contains 56,243 square miles, or 35,995,520 acres.

By its constitution the governor, lieutenant-governor, secretary of state, treasurer, auditor, attorney-general, commissioner of the land-office, and superintendent of public instruction, are chosen for two years. The senate consists of thirty-two members, and the house of representatives of not less than sixty-four, nor more than one hundred members; both are chosen for two years. Judges of the Supreme Court hold office eight years, and those of the Circuit Courts for six years. The judges are chosen by the people.

French missionaries and fur traders were the first discoverers and settlers of this territory. But it was not largely colonized. It

was transferred to Great Britain with other French possessions in 1763, and afterwards it underwent its full share of those Indian troubles which involved almost all the English settlements in this country. It was a part of the north-western territory, for which was made the ordinance of 1787, before referred to. It was organized as territory in 1805; and in 1818 the public lands were surveyed and offered for sale. A large immigration began, and has continued to the present time. In 1835 a controversy arose with Ohio concerning land claimed by the territory and also by the State; but in 1836 Congress passed an act of conditional admission of Michigan into the Union, requiring her to renounce her claim to the disputed territory, the upper peninsula being given to her by way of compensation. In accordance therewith, in 1837 the territory was admitted as a State. This State has large agricultural, manufacturing, mining, and commercial industries. Of these the agricultural are most important, for this is one of the great grain States of the West. Its manufactures are chiefly flouring-mills, breweries, distilleries, and oil-mills. Its fisheries are very large. Of its mining products, copper is much the most valuable; and in the northern peninsula there is found, in the remains of ancient mines and tools, evidence that the country was once occupied by a race of which the Indians found there had no tradition whatever.

**The commerce of Michigan is extensive, and is mainly with Canada, although there has been some effort to establish a direct foreign commerce, by ships sailing from Detroit. The home trade by the many railroads in the State is very large, and rapidly growing.**

#### FLORIDA.

**This State, situated at the southern extremity of the Union, is bounded north by Alabama and Georgia, south by the Gulf of Mexico, west by the same and Alabama, and east by the Atlantic Ocean. It contains 59,268 square miles, or 37,931,520 acres.**

**The governor and lieutenant-governor are chosen by the people for four years. The secretary of state, treasurer, comptroller, attorney-general, superintendent of public instruction, adjutant-general, and commissioners of immigration, are appointed by the governor, with the consent of the senate, for four years. The senators number twenty-four, and are chosen for a term of four years, one-half thereof being elected biennially. The members of the assembly, fifty-three in number, are elected for two years. The Seminole Indians send one member to each branch of the legislature; he must be a member of the tribe, and be elected by Indians**

qualified to vote. The judges are appointed by the governor, with the consent of the council. Those of the Supreme Court hold their office for life, or during good behavior. Judges of the Circuit Courts hold their office for eight years.

This State has a peculiar history of its own. It was first visited by Ponce de Leon, the Spaniard. He had been to America repeatedly, and was at one time governor of Hispaniola. In 1512 he was an old man, and had heard that somewhere in the islands of the newly discovered America there was a fountain which could restore youth and strength and beauty. Age had not subdued his spirit of adventure; and he sailed at the head of an expedition, fitted out at his own expense, in search of this fountain. He visited island after island, but sought for it in vain. In the course of his voyage he discovered Florida, on Easter Day, which is called in the Spanish language *Pascua Florida* [flowery passover]. From this circumstance, aided perhaps by the beautiful vegetation around him, he gave to the country the name of Florida. The next year, arriving in Spain and reporting his discovery, he was appointed governor of Florida, and required to colonize the country. Not, however, until 1521 did he go with two ships to take possession of his province. The natives resisted him with the most resolute hostility, and drove the Spaniards to their ships; and in the battle Ponce de Leon was mortally wounded, receiving his death-blow in the country where he had hoped to find the fountain of immortality. The Indians continued to resist the further efforts of the Spaniards to colonize the country; but its settlement made considerable progress.

In the middle of the sixteenth century many French Protestants, persecuted at home, fled to Florida, only to find themselves still worse treated. The Spaniards attacked them, and hung many on trees, with an inscription to the effect that they were put to death not as Frenchmen, but as heretics. A French party attacked and took the Spanish fort, and hung the Spanish soldiers on the same trees, with an inscription that they were put to death not as Spaniards, but as cut-throats and murderers. The Spaniards, however, persisted in their efforts to gain possession of the country. The English claimed it, and captured the Spanish fort of St. Augustine in 1586. But little is known of what happened there for the next century. In 1696 the French settled in Pensacola. In 1702 English colonists from Carolina and Georgia attacked the Spanish settlers. In 1763 Great Britain relinquished to Spain, Cuba, which it had recently taken, and received Florida in exchange. In 1783 Florida was ceded by England to Spain, and in 1819 Spain ceded the whole province, which had been divided into two by the British, to the United States, and possession was taken in 1821. The Territory



of Florida was organized in 1823. There was then a considerable immigration into the country; but in 1835 the Seminole war broke out, and it raged with great violence for some years, until in 1842 a treaty was made, by which most of the Indians consented to their removal west of the Mississippi. The State was admitted into the Union in 1845, and in 1858 all the remaining Indians were removed from the State.

There is a considerable immigration into this State, both from the Northern States and from Europe. There are some manufactures, and a valuable coasting trade; but the State is essentially agricultural. Cotton, sugar, rice, and corn are largely raised, and, with vegetables and fruits for the northern markets, bring large returns into the State. The warm climate and favorable soil permit kinds of cultivation scarcely known in any other part of the United States. Not only do oranges, lemons, and citrons grow well everywhere, but in the southern regions pineapples, bananas, and dates are raised easily, and ripen perfectly. A third part of the acreage consists of public lands not yet sold, and remaining to be disposed of to immigrants.

#### TEXAS.

This State is bounded north by New Mexico, Arkansas, and the Indian Territory, east by Louisiana and Arkansas, south-west and west by Mexico, and south and south-east by the Gulf of Mexico. It is the largest State in the Union, and contains 274,356 square miles, or 17,557,784 acres.

The governor, attorney-general, treasurer, secretary of state, comptroller, superintendent of public instruction, and commissioners of the land office and claims, are elected by the people for four years; but the governor cannot hold that office more than four years in any period of six years. Senators must have been resident citizens within the State for three years, and in their district for one year, and be twenty-five years old. They are thirty in number, and are elected for four years. The representatives must have been resident citizens within the State, and one year within their district, and twenty-one years old. They are elected for two years, and shall be in number ninety members, and no more. Clergymen, salaried officers under the United States government, and collectors of taxes who have not obtained a discharge for their collections, cannot be chosen to the legislature, or to State offices. The legislature cannot grant divorces nor permit lotteries. No individual may issue his paper as money; and no corporate body can be created, renewed, or extended, with the right to carry on banking, or to discount paper.

The judges of the Supreme and District Courts are appointed by the governor, with the advice and consent of the senate; the former for nine years, and the latter for eight years.

**The Territory of Texas was first visited by the French, who** endeavored to settle there; but they were driven off by the Spaniards, and a second attempt of the French was equally ineffectual. Texas attained no prosperity under its Spanish rulers. In fact, while it remained under the Spanish government, and afterwards a part of Mexico, its history is one of perpetual conflict. Still, the population grew considerably, mainly by immigration from the United States. In 1835 the people of the territory declared their independence, and succeeded in driving out the Mexicans for a time. But they returned under Santa Anna, and war was renewed and raged with much violence, and with alternate success. At length the Mexican forces were defeated, and Santa Anna taken prisoner. In 1836 the independent republic of Texas was established. In 1837 it was acknowledged by the government of the United States, and in 1840 by England, France, and Belgium. The Mexican government did not cease its efforts to recover Texas, and sent, not so much armies as marauding expeditions into the republic. In 1843 President Tyler made to the President of Texas propositions looking to the annexation of the republic to the United States. They were favorably received, and a treaty made in 1844, which was rejected by the senate. In the next year, however, joint resolutions for the annexation of Texas passed the house of representatives and the senate, by small majorities, and were approved by President Tyler the same day. After the admission of the State, Congress voted to pay to her ten millions of dollars in compensation for her relinquishment of a part of her territory, and of all her claims against the United States. By the resolutions of annexation, it was provided that four new States might hereafter be formed out of the territory thereof. But no such States have as yet been formed, and Texas remains quite unequalled in point of magnitude.

**This State has great facilities for internal and foreign commerce.** Railroads are numerous, and all inducements are held out to immigrants, by the healthiness of the State, the cheapness of the land, and its extreme fertility. It has already a considerable commerce; and the production of cotton, corn, and wheat is large: and though the State at present is but thinly peopled, the promise it holds out of ultimate prosperity is very great. As a stock-raising State, it is now one of the first in the Union.

## IOWA.

**This State is bounded north by Minnesota, south by Missouri, east by Wisconsin and Illinois, and west by Nebraska and Dakota. It contains 55,045 square miles, or 35,228,800 acres.**

**The governor, lieutenant-governor, and superintendent of public instruction are chosen by the people for two years, the election taking place every odd year. The secretary of state, auditor, treasurer, and registrar of the land-office, are also chosen for two years, and are elected in every even year. The senate shall not consist of more than fifty members, and are chosen for four years, one-half being chosen every two years. The house of representatives shall not consist of more than one hundred members, who are chosen for two years; and the sessions of the legislature are biennial. The number of senators cannot be less than one-third nor more than one-half that of the representatives. The judges are elected by the people; those of the Supreme Court for six years, and those of the Circuit Court for four years. The constitution provides that State debts shall not be contracted except to repel invasion or to suppress insurrection: but money may be borrowed to supply defects in the revenue; not, however, more than \$250,000 at any one time. Suspension of specie payment shall never be permitted. The legislature cannot grant divorces nor permit lotteries; and no lease of agricultural lands shall be for more than twenty years.**

**Iowa was a part of the Louisiana purchase already described. The first settlement within its limits was made at the close of the last century by Canadian Frenchmen. In 1838 Iowa was organized as a separate territory, and in 1846 was admitted into the Union as a State.**

**The climate and soil of Iowa are, on the whole, favorable to agricultural operations, although its winters are made severe by the northern winds which sweep over its level prairies. Its coal-fields are very large and productive, and of great value. It has also large deposits of lead, and iron ore of the best quality is found in many places. This State is classed among the most healthy countries of the world, which is owing in great part to its excellent natural drainage.**

## CALIFORNIA.

**This State is bounded north by Oregon, south by Mexico, east by Utah and New Mexico, and west by the Pacific Ocean. It contains 188,986 square miles, or 120,947,840 acres.**

The governor, lieutenant-governor, secretary of state, comptroller, treasurer, attorney-general, superintendent of public instruction, and surveyor-general, are chosen by the people for four years. The senators, who are forty in number, are chosen for four years, one-half being chosen every second year. After the State numbers one hundred thousand inhabitants, the number of representatives shall never be less than thirty, nor more than eighty, and they are elected for two years. The judges of the Supreme Court are elected by the people for ten years, and the district judges for six years, and the County Court judges for four years. The supreme judges are chosen by the people of the whole State; the district judges and the county judges by the people of their respective districts and counties. By the constitution, no public debt can be created exceeding at any time the sum of three hundred thousand dollars. The legislature cannot grant divorces nor permit lotteries. The circulation of paper money of any kind is prohibited.

The history of this State is most remarkable. It was discovered in 1534 by a Spanish explorer, and settlements were made in 1683 by Jesuit missionaries. This was in Old California, so called, or Lower California, as now called. The first mission in Upper California was founded almost a century later; and the government of the country, temporal as well as spiritual, was given to monks of the order of St. Francis, who gave their name to the bay of San Francisco, discovered in 1770, and a few years after established a mission there. The territory was then considered a part of Mexico; and when the independence of Mexico was established in 1822, the monks of St. Francis were deprived of their power and their possessions. In 1846 war was declared between Mexico and the United States; but the immigration from the latter into California had already been great, and the American settlers declared the independence of the country. Soon afterwards United States officers arrived there by sea, took possession of the country as a territory of the United States, and after some conflicts succeeded in establishing their power. In the treaty of peace between Mexico and the United States in 1847, California, with some other territory, was ceded to the United States for fifteen millions of dollars. Early in 1848 gold was discovered; and it is most remarkable, considering the abundance of the metal, the numerous settlements in the State, the large number of inhabitants, and the length of time which had elapsed since it was first peopled, that this discovery had been delayed so long.

Similar ignorance or mistake existed in regard to what are now known to be the remarkable agricultural facilities and resources of the State. Alike by its mineral treasures and by the results of its agriculture, this State is already rich and prosperous, and promises

to stand high among the richest countries of the world. Its gold region extends over an estimated area of 15,000 square miles, or about a tenth of its whole surface. It is useless to attempt enumerating its agricultural productions. It may rather be said that every thing of value which is grown elsewhere is raised there, excepting only the spices and some other products of the tropics. Already its wheat is largely exported, and its production of wine is very great, and rapidly increasing. Its capital, San Francisco, is situated on a bay which affords not only one of the best harbors in the world, but the only good harbor on that coast till you reach the British dominions. Its commerce is very great, not only with the other United States and with Europe, but with Japan, China, the East Indies, and Australia. It is subject to earthquakes, none of which as yet have done much damage. It is possible they may have checked its growth somewhat, and may do so in time to come; but they must be far more destructive than they have ever been to prevent that city from becoming one of the greatest commercial ports in the world.

#### WISCONSIN.

Wisconsin is bounded north by the British possessions, south by Illinois, east by Michigan, and west by Iowa and Minnesota. It contains 53,924 square miles, or 34,511,360 acres.

The governor, lieutenant-governor, secretary of state, treasurer, and attorney-general, are chosen by the people for two years. The number of members of the house of representatives shall never be less than fifty-four, nor more than one hundred. The senate shall not be more than one-third, nor less than one-fourth of the number of the representatives. The representatives are elected annually, and the senators hold office two years. The judges are elected by the people, for a term of six years.

The territory of which this State is composed was first settled at Green Bay, two hundred years ago, by the French; and the country remained in the possession of France until surrendered to Great Britain in 1763. In 1796 the Americans obtained possession of it, and extended the Ordinance for the government of the North-west Territory over the whole region. Although so long known, and in some places settled, the population of the State may be said to have begun when, in 1827, discoveries of large deposits of lead within it attracted the attention of immigrants.

In 1836 it was organized as a territory, and admitted into the Union in 1848. Very few of the States have so rapidly increased in population as this. In the ten years following 1840 it was multi-

plied nearly tenfold, and in the following ten years much more than doubled. For some reason, the immigrants from Norway and Germany, especially the former, have gone to this State, not exclusively certainly, but in very large proportion.

**The State is a vast rolling prairie, with no mountains, and few hills of any magnitude.** It is eminently agricultural, the surplus wheat exported bringing into the State heavy returns. Other staple crops are grown, especially hops, and yield abundantly. A very large lumbering business is carried on in the northern and western counties, where there are large pineries which cannot be exhausted for many years. The mineral deposits are various, extensive, and valuable. The region where lead is found covers more than two thousand miles in this State. There are large deposits of iron of great excellence, and some copper deposits. The manufacturing industry of the State is now large, and is growing rapidly.

#### MINNESOTA.

**This State is bounded north by British America, east by Lake Superior and Wisconsin, west by Dakota, and south by Iowa.** It contains 83,531 square miles, or 53,459,840 acres.

**The governor, lieutenant-governor, secretary of state, state treasurer, and attorney-general,** are chosen by the people, by a plurality vote, for two years, the auditor for three years. The number of members who shall compose the senate and house of representatives shall be prescribed by law; but the representation in the senate shall never exceed one member for every five thousand inhabitants, and in the house of representatives one member for every two thousand inhabitants. The senators are chosen for two years, one-half each year. The representatives are elected annually. The judges of the Supreme and District Courts are elected by the people for seven years, and the other judges for two years.

**About one-third part of this State was included within the Louisiana purchase, and about two-thirds of it within the North-west Territory.** Two hundred years ago French explorers penetrated the territory. It was for a long time the seat of much missionary enterprise, and of a valuable trade with the Indians. The Territory of Minnesota was organized in 1847, extending on its western border much beyond its present limits. In 1850 its population was only about five thousand; the year after, the Sioux Indians ceded to the United States all their lands in the territory west of the Mississippi. The population then increased so rapidly that the State with its present limits was admitted in 1858.

Although so far to the north, and with a climate of great severity in winter, the uncommon healthiness of the territory, and the adaptation of the soil to the cultivation of all the productions of the temperate zone, attract a large immigration. The winters, while cold, are clear and dry, with but little snow. It has been supposed to be singularly favorable for persons who have consumptive tendencies; and many invalids from the Eastern States have sought cure or relief from the salubrity of its climate; and a number of them, finding that relief, have become permanent inhabitants.

#### OREGON.

This State is bounded north by Washington Territory, east by Idaho, south by Nevada and California, and west by the Pacific. It contains 95,274 square miles, or 60,975,860 acres.

The governor, secretary of state, and treasurer, are chosen by a plurality of votes, for a period of four years. The senate consists of sixteen members, who are elected for four years, and the house of representatives of thirty-four members, who are elected for two years. Their numbers may be enlarged, but may not be over thirty senators and sixty representatives. The legislature meets biennially. The judges are chosen in districts by the people for six years; the attorney for each district is chosen for two years.

The Columbia River, separating this State from Washington Territory, was discovered in 1792, by Robert Gray, a ship-master from Boston, who gave to it the name of his vessel. His report of the country induced Jefferson to send an exploring expedition, under Captains Lewis and Clark, across the continent, in 1804 and 1805. This expedition was the earliest of the many useful exploring expeditions which have been sent by the government into its western territories. Besides acquiring much valuable information, it was regarded as giving to this country a stronger title to the river and adjacent territory. In 1811 John Jacob Astor's fur company was established at the mouth of the Columbia River, at Astoria. The war with England breaking out next year, the establishment was sold to the British North-west Fur Company, to save it from capture. In 1846 the treaty with Great Britain secured to the United States the whole of Oregon. It was organized as a territory in 1848, including what is now the Territory of Washington. It was admitted to Congress in 1857. Indians are numerous there, and from the first settlement have been troublesome. No great battle took place, although it could hardly be said that the settlers from any part of the territory were at any time quite safe; but the savages may be said to be now effectually subdued.

Gold deposits have been discovered, and worked to some advantage, though as yet they are not very productive. The population of the State is steadily increasing. The region lying west of the Cascade Mountains is well adapted for stock-raising, and for agriculture generally; for although the climate is too moist and cool for Indian corn, other crops, as wheat, oats, and potatoes, grow well, and on the rich soil of the bottom-lands give great returns. The region east of the Cascade Mountains is, for the most part, too mountainous for tillage, but offers great facilities for stock-raising. Its extensive forests abound in valuable timber. Its fisheries of salmon are exceedingly productive, and large quantities are exported.

#### KANSAS.

This State is bounded north by Nebraska, east by Missouri, south by the Indian Territory, and west by New Mexico and Utah. It contains 81,318 square miles, or 52,143,520 acres.

The governor, lieutenant-governor, secretary of state, auditor, treasurer, superintendent of public instruction, and attorney-general, are chosen by the people for a term of two years. The senators are twenty-five in number, and are elected for two years. The representatives, seventy-five in number, are elected for one year. The constitution was adopted in 1859, and was amended in 1867, by an amendment to disfranchise rebels. The judges are elected by the people; those of the Supreme Court for six years, and those of the District Courts for four years.

The State formed a part of the Louisiana purchase, heretofore frequently referred to, and in May, 1854, was organized as a separate territory. The peculiar feature in the history of this State was the violent conflict which took place on the question whether it should be a free State or a slave State. In our account of Missouri, what was termed the Missouri Compromise was referred to, by which it was enacted that in all the territories ceded by France to the United States under the name of Louisiana, which lie north of latitude 36° 30', excepting only "such part thereof as is included within the limits of the State contemplated by this act [Missouri], slavery and involuntary servitude, otherwise than in the punishment of crime, whereof the party shall have been duly convicted, shall be and is for ever hereby prohibited." But by the act of Congress in 1854, which organized the territories of Kansas and Nebraska, it was declared that the constitution and all the laws of the United States should be in force in those territories, except the Missouri Compromise Act of 1820, "which is hereby declared inoperative and void." Thereupon the antislavery party of New England, aided



by charters granted by Massachusetts and Connecticut to emigrant aid companies, made great efforts to fill the territory with emigrants from the free States opposed to slavery. These efforts were met by counter efforts, mainly from the State of Missouri. At length the conflict grew into actual war. Fights occurred between the parties, in which many persons were killed on each side. At length, however, the free State men prevailed, and the State was admitted as a free State.

In the middle of this State a considerable extent of desert and uncultivable land reaches far to the southward. Elsewhere the soil is generally rich, and in many places exceedingly fertile. The climate is mild, and the winters short. Thus far there is reason to regard the State as remarkably healthy. The coal-fields of Missouri extend into it, and there are other valuable minerals. Prairies prevail over the State, but much timber is found in the bottom-lands near the rivers. The western part of the State is still occupied by many Indian tribes, some of whom have reservations within it. The soil and climate hold out attractive invitations to immigrants. By the census of 1850 the whole territory was a wilderness, with but a few small white settlements. But since that time the population has increased with great rapidity. Within the last few years many railroads have been constructed, a branch of the Pacific Railroad passing through the entire length of the State; and railroads running north and south provide the means of intercourse and trade with the other States.

#### WEST VIRGINIA.

This State is bounded north by Pennsylvania, north-west by Ohio, west by Kentucky, east by Virginia and Pennsylvania, and south by Virginia. It contains 24,000 square miles, or 15,360,000 acres.

The governor, secretary of state, treasurer, and auditor are chosen by the people, and hold office for two years. The senate consists of eighteen members, elected for two years; and the house of delegates of forty-seven, elected for one year. The judges are elected by the people; those of the Supreme Court hold office twelve years. They are three in number, one of whom goes out of office every fourth year. Judges of the Circuit Courts hold office six years.

This State may be regarded as one of the results of the recent civil war. It consists of the western counties of the old State of Virginia, and arose from a difference of sentiment from the people of the eastern half of Virginia in regard to secession. In 1861

delegates from forty counties met at Wheeling, and protested against secession. This convention organized a provisional government. This was early in the summer. Late in the autumn of the same year a convention at the same place formed a constitution for a new State, which was accepted by the people the next year; and in that year, 1862, Congress passed an act admitting the State, on condition of certain amendments to the constitution. These being adopted by the people, the President in 1863 proclaimed the admission of the State.

This State is generally well adapted to agriculture, and it is very rich in minerals. Excellent coal is found in great abundance, and iron, salt, and petroleum are also met with in many parts of the State. Its commerce and manufactures are inconsiderable; but the territory is traversed by railroads, which give great facilities for the transport of its mineral and agricultural productions.

#### NEVADA.

This State is bounded north by Oregon and Idaho Territory, east by Utah and Arizona, and south and south-west by California. It contains 81,539 square miles, or 52,084,920 acres.

The governor, lieutenant-governor, attorney-general, secretary of state, treasurer, surveyor-general, and comptroller, are chosen by the people for four years. The number of senators shall not be less than one-third nor more than one-half of that of the representatives. The representatives hold office two years, and senators four years. The judges are chosen by the people; those of the Supreme Court hold office six years, and those of the District Courts four years.

The territory from which this State was formed was a part of that ceded by Mexico, under the treaty which in 1848 closed the war with that country; having previously belonged to Upper California. The settlement of the State was slow at first, and until the discovery of silver attracted immigration; since that it has been rapid. It was organized as a territory in 1861, and admitted as a State in 1864. The State may be regarded as a mountain tableland, very largely covered with forests and valuable timber. Some mountain chains rise above its prevailing level, and the valleys between them contain excellent and productive soil. Gold has been found there, and worked with profit; but the mining of the very rich silver deposits is the principal industry of the State. The Comstock lode has yielded immense amounts of silver, and is still very profitable. It is indeed said that this lode produces annually from fifteen to twenty millions of dollars. Other valuable minerals are found; and salt is especially abundant and accessible, large

quantities lying on or near the surface. It is used in the reduction of silver ores, and its abundance causes the deposits of that metal to be mined with great profit.

#### NEBRASKA.

This State is bounded north by Dakota, east by Iowa and Missouri, south by Kansas, and west by Colorado and Wyoming Territory. It contains 76,000 square miles, or 48,640,000 acres.

It is a part of the Louisiana purchase, and was organized as a territory in 1854, and in 1867 was admitted as a State. This act of admission contained a condition that there should never be a denial of the elective franchise, or any other rights, to any person by reason of race or color, except Indians not taxed. It was vetoed by President Lincoln, but passed by both Houses of Congress over the veto.

The governor (there is no lieutenant-governor), secretary of state, and treasurer are chosen by the people for two years, and the auditor for four years. The senators are thirteen, and the representatives thirty-nine in number. There shall never be more than twenty-five in the senate, and seventy-five in the house of representatives. They are chosen at the same time, for two years. The judges are elected by the people, for a period of six years.

Immigration into this State has been rapid and constant. It is a prairie State, and the soil, especially of the eastern portion, is very fertile. The heavy and closely matted sward requires much force to break it, but subsequent culture is easy. Coal-beds are found in many places, and worked with some profit. But the deposits of this mineral are not so great as in many of the States. Some part of the territory contains valuable timber; and forest-trees have been largely planted: and thus far experiments have shown that the soil and climate are very favorable for the cultivation of fruit.

We next give the territories of the United States, in the order in which they were organized, closing with the District of Columbia.

#### NEW MEXICO.

This territory is bounded north by Colorado, east by the Indian Territory, south by Texas and Mexico, and west by Arizona. It contains 121,000 square miles, or 77,444,000 acres.

Its executive and judicial officers are appointed by the President. The judges hold office for a period of four years. The council consists of thirteen members, chosen by the people for two years;

and the house of representatives of twenty-six members, elected annually.

**This territory was settled a long time ago by the Spaniards, and continued to be a part of Mexico until it was ceded to the United States by the treaty of 1848.** The white population, which is quite large, is mainly Spanish and Catholic; the Spanish language being used by the people, and also in the proceedings of the legislature. Much of the soil is suited to agriculture or grazing, although irrigation is necessary for a large part of it. The mineral deposits are large and various, and it is believed they are not yet fully discovered. Gold, silver, and copper mines are already worked with much profit, and present indications lead to the conclusion that the production of silver will be the most profitable of the mining industries of the State. Lead, iron, and coal are also found in considerable abundance, and a large amount of salt is procured from the salt lakes.

#### UTAH.

**This territory is bounded north by Wyoming and Idaho, east by Wyoming and Colorado, south by Arizona, and west by Nevada.** It contains 88,000 square miles, or 56,320,000 acres.

**Its executive and judicial officers are appointed by the President.** The council consists of thirteen members, who are elected for two years; and the house of representatives of twenty-six members, elected annually.

**This is the great Mormon territory.** This people was first established in Ohio, then in Missouri, and afterwards at Nauvoo, in Illinois. When driven from that place in 1845, after some wandering they settled at the Great Salt Lake in Utah in the autumn of 1848. They were not very numerous; but a most energetic and effectual system of conversion and immigration brought to them great numbers from Great Britain, Norway, and Sweden, Germany, Switzerland, and France. In 1849 they organized a State, under the name of Deseret, and framed a constitution, which they sent to Washington; but Congress would not recognize the new State, but organized the Territory of Utah under the common territorial laws, and President Fillmore appointed Brigham Young governor. His violence in the following year, and his defiance of the laws of the United States, caused the removal of Young as governor, and the appointment of Colonel Steptoe of the army. This gentleman arrived in Utah in 1854, but concluded that it would not be well to assume the office of governor; and after a short time he resigned the office, and removed to California, with the soldiers he had brought with him. The outrages and usurpations of the Mormons continued, and

in 1857 President Buchanan appointed Alfred Cumming Governor of Utah, and Judge Eckels chief justice, and sent them with a force of 2,500 men, who were to sustain them in the discharge of their duties. Difficulties still continued; but a kind of peace was patched up in 1858, the President offering pardon to Mormons who would submit to the federal authority, and the heads of the church accepting the offer. Since that time there has been no open and violent rebellion, but constant difficulties have been recurring, sometimes of a threatening character. Brigham Young is no longer governor, but, as president of the Mormon church, holds, in fact, the supreme authority. As is well known, polygamy is practised here, not merely as a permitted thing, but as in itself good and desirable.

The industry and skilful cultivation of the Mormons are quite remarkable; and the soil and climate are upon the whole favorable to agriculture, although artificial irrigation is very generally necessary. This territory does not invite a large accession of people, except of those who become Mormons; but they have a very large number of converts in Europe, who come over to Utah as means are provided for them.

#### WASHINGTON.

This territory is bounded north by the British Possessions, east by Idaho, south by Oregon, and west by the Pacific. It contains 70,000 square miles, or 44,800,000 acres. Formerly the northern part of Oregon, it was organized as a territory in 1853.

The executive and judicial officers are appointed by the President. The council consists of nine members, elected for three years; and the house of representatives of thirty members, elected for one year. The territory is divided into three districts for judicial purposes, and in each of them a prosecuting attorney is chosen by the people for two years.

Although so far north, the climate is very mild; and it is not uncommon for the grass to be growing through the winter. It is said to resemble England in point of climate; and, like that, while well adapted to wheat and fruits of many kinds, does not permit the profitable culture of Indian corn. Its forests abound in lumber of great variety and of the greatest excellence. The manufacturing of this is now very large and rapidly increasing, and great quantities are already exported to various countries in the world. Gold has been found and worked, but not as yet to great profit. Coal is supposed to be abundant. Probably the fishing interests are likely to be, in coming ages, the principal industry of the country. Salmon, halibut, and cod are taken in the greatest abundance. Hereafter, when the country fills up with people, its commercial facilities will doubtless

be taken advantage of. The coast has many excellent harbors, and the Columbia River is navigable through a great part of its course. Public lands open to immigrants are still abundant.

#### COLORADO.

This territory is bounded north by Nebraska and Idaho, east by Nebraska and Kansas, south by the Indian Territory and Mexico, and west by Utah. It contains 104,000 square miles, or 66,560,000 acres.

The executive and judicial officers are appointed by the President. The legislature is composed of a council of thirteen members, and the house of representatives of twenty-six members, who are elected annually.

It was formed from parts of the surrounding territories, and organized as a territory by itself in 1861. In 1865 a constitution was formed, and adopted by the people. A bill to admit Colorado as a State passed Congress in the next year, but was vetoed by the President. In the following year, 1867, another bill of admission passed through Congress, and this also was vetoed by the President, and Colorado remains a territory.

Much of this territory is well adapted to agriculture and stock-raising, both of which pursuits are now carried on extensively and profitably; but mining will probably continue to be the principal industry of the territory. The deposits of gold and silver appear to have no limit in their supply, excepting the cost of working them; and the progress of science and mechanical invention are every year making this work easier and less costly.

#### DAKOTA.

This territory is bounded north by the British Possessions, east by Minnesota and Iowa, south by Iowa and Nebraska, west by Montana and Wyoming. It contains 152,000 square miles, or 97,280,000 acres.

The executive and judicial officers are appointed by the President. A very large proportion of the territory is still unoccupied, except by Indians. While sufficiently well adapted to agriculture, and with valuable and various mineral deposits, discovered or indicated, it does not invite immigration by that abundance of the precious metals which characterizes some of the western and south-western States; and the numbers and hostility of the Indian tribes living within the territory constitute a hinderance to immigration. But this hinderance will before long pass away; and it is believed

that the climate, soil, abundance of public land, and the promise of rich mineral deposits, will before long cause a rapid increase of population.

#### ARIZONA.

**This territory is bounded north by Utah, east by New Mexico, south by Mexico, and west by Nevada and California. It contains 114,000 square miles, or 72,960,000 acres.**

**This territory was contained in the region obtained from Mexico in 1854. It was organized as a territory in 1863. Its executive and judicial officers are appointed by the President.**

**It contains a large extent of the Colorado River and valley; and early in the last century many flourishing settlements were made within it. The ruins of their buildings, some of which, the cathedrals especially, were large and costly, and the remains of an excellent system of irrigating canals, all show the numbers, skill, and industry of the population then existing in that region. Since it has been in our possession, the depredations of the savages have prevented settlements, except in the southern part, and along the Colorado or near to it, upon its principal tributaries. Its northern part is still unexplored by the whites, and remains in the almost undisturbed possession of the Indians. There are extensive valleys of remarkable fertility, and adapted to various kinds of agriculture; and in the southern part of the territory it is believed that the climate permits the profitable cultivation of sugar and cotton. The Colorado River is navigable for over six hundred miles from the ocean, this navigable portion reaching into and beyond Arizona. There are strong indications of extensive and various mineral deposits of the greatest value, and in some places these are ascertained and are now worked.**

#### IDAHO.

**This territory is triangular in shape, bounded on the north-east by Montana, east by Wyoming, south by Utah and Nevada, and west by Oregon and Washington. It contains 91,000 square miles, or 58,240,000 acres.**

**This territory was organized in 1863, and its executive and judicial officers are appointed by the President. It consists in large part of table-lands and mountainous country, which cause the winters to be cold; they are, however, dry and healthy. In the valleys much soil is found suited to tillage, and large crops of cereals are raised with great profit; and, upon the whole, the agricultural population of the country is now well established and increasing. Mineral deposits of great variety and high promise are found exten-**

sively, and some of them have been profitably worked. Further improvement in the method of producing and working the ores, and a greater facility of transportation, will no doubt invite a large immigration.

#### MONTANA.

This extensive territory is bounded north by the British Possessions, east by Dakota, south by Wyoming, and south-west by Idaho. It contains 144,000 square miles, or 92,160,000 acres. This territory was organized in 1864. The executive and judicial officers are appointed by the President.

This territory is very mountainous; but the valleys are extensive, and the land in them is exceedingly fertile. Grazing lands, well adapted to stock-raising, are scattered through the territory. Irrigation is necessary over a large part of the cultivated land; but the mountain streams supply water in abundance. Timber, stone, and brick-clay for building abound everywhere. It is, however, its mineral deposits which promise great prosperity to the territory, when they are fully developed and worked. Some very rich silver lodes have been ascertained, and expensive machinery is now working them with great success. Indications lead those who are acquainted with the subject to the belief that this territory will become one of the most productive mining regions in the country. Coal is also found, but not to any very great extent, or of any special value. Copper and lead deposits are numerous, but have not yet been largely worked. When railroad facilities for trade and intercourse are increased, this territory may well be expected to attain to great prosperity.

#### WYOMING.

This territory is bounded on the north by Montana, east by Dakota and Nebraska, south by Colorado and Utah, and west by Utah and Idaho. It contains 87,000 square miles, or 55,680,000 acres.

This territory was organized in 1868. The executive and judicial officers are appointed by the President: the governor, judges, and attorney for a term of four years. The council consists of nine members, chosen for two years, and their number may be increased to thirteen. The house of representatives has thirteen members, chosen for one year, and their numbers may be increased to twenty-seven. The Rocky Mountains, the Big-Horn and Rattlesnake Mountains, and the Black Hills pass through this territory, and cause a larger part of it than of almost any other territory to be mountainous; but numerous valleys and some plains are well adapted to cultiva-



tion. The Pacific Railroad crosses the territory. Deposits of gold have been discovered in various parts of it, which are considered of great promise; but they have not yet been largely worked.

#### ALASKA.

This territory consists of the Russian possessions in North America which were ceded by Russia to the United States in 1867 for \$7,200,000. It is bounded south by latitude  $54^{\circ} 40'$ , and east by longitude  $141^{\circ}$ , west by the Pacific and Behring Straits, and extends as far north as the continent.

It has not yet been organized as a territory; but in 1868 a collection district was established, and the laws of the United States which relate to customs, navigation, and commerce were extended over the territory. It embraces the Aleutian Islands, which extend more than one thousand miles towards Asia. The climate is very much milder than in the same latitudes on the Atlantic coast, and the richness of soil is proved by the heavy growth of timber, which covers a large part of the territory. But it has too much rain and too little sunshine to admit of much profitable cultivation. The river Yukon is one of the largest that flows into the Pacific, and is navigable for most of its length. Among its mountains are some, as Mount St. Elias and Mount Fairweather, which are believed to be among the highest in North America. It has some active volcanoes.

This territory can never be largely peopled nor widely cultivated; but its fisheries, and the furs from the seals which resort to the islands, and from the wild animals on the continent, are immensely valuable.

There is a small group of islands in Behring Sea, upon which are the only important "rookeries" of the fur-seals now known in the world. In the Falkland Islands and elsewhere in the Antarctic seas, where they were once immensely numerous, they have been almost exterminated by a merciless and improvident destruction. But the Russians have always protected and preserved the rookeries on their islands; and there is every reason to believe that these animals come there now in their breeding seasons as numerous as ever. As Congress has adopted similar means of preserving them, it may be hoped that this important source of wealth will remain undiminished.

In 1870 these seal islands were leased for a term of twenty years to the Alaska Commercial Company of San Francisco. The provisions of the lease are well adapted to the purpose of preserving the number of seals unimpaired. The islands are placed under the

exclusive possession of the company, and constant and watchful care is taken to keep off intruders. The company is permitted to kill one hundred thousand seals in each year, which is but a small part of what might be killed, for a time, if there were no systematic preservation. For these seals the company pay to the natives who take them forty cents each, and to the government \$2.50 each, which, with an annual bonus of \$50,000, gives a net revenue of \$300,000. The seal-skins are sent to London in an undressed state, and there sold in that condition for about \$8.00 each.

#### INDIAN TERRITORY.

**This territory is bounded north by Kansas, east by Missouri and Arkansas, and south and west by Texas. It contains about 70,000 square miles, or 44,800,000 acres.**

**This territory has been set apart by the United States as a permanent home for the Indians who are native to the territory, and also for those who have been removed thither from other regions. It has never been organized as a territory, and is all that remains of the Louisiana purchase not admitted as States or organized as territories. Each tribe of Indians owns the portion allotted to it by the United States. They are allowed to make their own laws, and live after their own habits and pleasure in all respects. If crimes are committed by them against white men, the Indians may be tried and punished by the United States courts sitting in the districts of the adjoining States of Arkansas and Missouri. A vast tract of country, commonly known as the great American Desert, most of which, as is now believed, can never be brought under profitable cultivation, extends over the northern and western portion of the territory; but in the remainder extensive plains, with the hills and valleys, offer abundance of cultivable land for the support of the Indians, should they become civilized and industrious. Some of the tribes have already become so to a considerable extent. They have churches, schools, and a form of government resembling those of the adjoining States. The rest of them, who adhere to their wild life as hunters, still find in the territory abundance of wild animals, although these are fewer than they were. Most of the Indians, and all in some circumstances, receive assistance from the United States.**

#### DISTRICT OF COLUMBIA.

**This district is bounded north-east and south by Maryland, and west by Virginia. Its area is now 55 square miles, or 35,200 acres.**

During the revolutionary war, and from that time until the constitution was adopted, Congress met at Philadelphia, Annapolis, Princeton, Trenton, and New York. When the government was organized under the constitution, an earnest discussion, exhibiting much strong feeling, took place in Congress as to where the national capital should be located. Each of the principal cities in the Middle States had its advocates. Perhaps it was desired to avoid giving any one of them an advantage which others claimed; and for this and other reasons it was determined to locate the capital in some new place, and then the undoubted wishes and opinions of Washington had influence in fixing the place. In 1790 an act was passed, providing, "That a district of territory on the river Potomac, at some place between the mouths of the eastern branch and the Connogacheague be, and the same is hereby accepted for the permanent seat of the government of the United States;" and that Congress should sit in Philadelphia until November, 1800, and then should remove to the selected district. It was agreed that this district should be a square of ten miles, or one hundred square miles. Of this one hundred miles, about fifty-five miles lying to the north-east of the Potomac was ceded to the United States by Maryland, in 1788; and the next year Virginia ceded about forty-five square miles lying on the other side of the Potomac. So the district remained nearly sixty years, when, in 1846, that part of it which lay on the Virginia side of the Potomac was ceded back to that State.

The Constitution of the United States gives to Congress exclusively control over the district, which has one delegate in Congress. The judges, four in number, are appointed by the President, and hold their office for life, or during good behavior. Within the district are the cities of Washington and Georgetown, each of which has its own municipal government, that can lay taxes for municipal purposes.

The city of Washington lies at the head of the navigable portion of the Potomac, and is about three hundred miles from the ocean, by that river and Chesapeake Bay. It was believed at the time of this selection that its position on the Potomac would give it eventually an extensive commerce; but that hope has not as yet been verified. The climate is warm and damp, and parts of the district are subject to summer and autumnal fevers, and other effects of local miasma.

The city of Washington is the capital of the nation, where large expenditures are made, not only by members of Congress, but by all the officers of government residing there. It has already grown to be a considerable city, and is growing, if not rapidly, yet at a rate

which indicates a large population in the future. The city contains the Capitol, in which are rooms for each house of Congress, for the Supreme Court, and for other purposes. The entire length of this building is 751 feet, and its greatest depth is 324 feet. The district contains also the executive mansion, often spoken of as the "White House," and buildings for the several departments of government; for the patent office, the post office, and the Smithsonian Institution. There are also a national observatory, a national printing-office, a navy yard, armory, military asylum, and many other public buildings.

We here close our brief account of the States and Territories comprised within the United States of America. A learned lawyer in Virginia, in his commentary on Blackstone, said, in 1803: "The whole number of senators is at present limited to thirty-two. It is not probable that it will ever exceed fifty!" Now it is seventy-four. Let us also contrast the position which this country held among the nations of the world when the constitution was formed, with that which it holds now. At that time, Jay, Madison, and Hamilton wrote the papers which were afterwards published as "The Federalist." There could be no higher authority than that of these three men. In No. 62, this is the description of our country: "She finds that she is held in no respect by her friends; that she is the derision of her enemies; and that she is a prey to every nation which has an interest in speculating on her fluctuating councils and embarrassed affairs." Compare this with the description which would be given of her now, even by those who were least disposed to speak well of her! How much of this wonderful growth in strength and prosperity do we owe to our admirable constitution?

We cannot read the future; but of this we may be sure: if we grow proud of our prosperity as if it were our own work; if the people of this country think they have the right to indulge their passions, prejudices, and fantasies, because they have the power to do so; if their liberty is corrupted into license; if different localities and different interests contend for special advantages, forgetting the equal rights of their brethren and neighbors,—all the lessons of history must be false, and all the teaching of human experience vain, if a sure and swift retribution does not overtake us, and our decline and decay tell to all coming ages a story as marvellous as that of our past progress and our present prosperity.

Let us hope for better things. Let us hope, and each one, in his place and way, strive, to do what will best secure and promote this

prosperity. Let us guard our freedom from corruption, never forgetting that the only way to preserve our freedom is to use it aright. So let us do; and it may well be that we have yet seen only the morning brightness of a day of which the meridian splendor will surpass anticipation, and whose sun will not go down.

**Table VII.**, annexed to this chapter, gives the square miles of surface of each State, its population in 1790, its population in 1870, its rank in population in 1790, its rank in population in 1870, and the present number of representatives in Congress to which it is entitled.

The table permits many interesting comparisons of the States with each other, and of the present with the past. It shows the vast disparity between the States in extent, — Texas, the largest, being more than two hundred times as large as Rhode Island; and in population, — New York, the most populous, having more than one hundred times the population of Nevada. It also shows the great and rapid increase of population through the whole country; and the rank of the States when measured by population, and the changes which have taken place in this rank in the last eighty years.

It will be seen that the population of the States was, in 1790, 3,942,270; there were then no territories. In 1870 the population of the States was 38,115,641, and of the territories, 442,730, making the whole population of the United States 38,558,371; showing that the increase of the population in these eighty years was almost eightfold. When the first House of Representatives was organized, the whole number was 65, now it is 292.

## VII.

STATES.	Square miles of area.	Population in 1870.	Population in 1790.	Rank in 1870 by population.	Rank in 1790 by population.	Number in 1874 of representatives.
Alabama . . . . .	50,722	996,992	. . . .	16	..	8
Arkansas . . . . .	52,198	435,450	. . . .	26	..	4
California . . . . .	188,981	560,247	. . . .	24	..	4
Connecticut . . . . .	4,750	537,454	251,002	25	8	4
Delaware . . . . .	2,120	125,015	59,096	34	16	1
Florida . . . . .	59,248	187,748	. . . .	33	..	2
Georgia . . . . .	58,000	1,184,109	82,548	12	18	9
Illinois . . . . .	55,410	2,539,891	. . . .	4	..	19
Indiana . . . . .	33,809	1,680,637	. . . .	6	..	13
Iowa . . . . .	55,045	1,194,020	. . . .	11	..	9
Kansas . . . . .	81,318	864,399	. . . .	29	..	3
Kentucky . . . . .	37,630	1,321,011	73,677	8	14	10
Louisiana . . . . .	41,346	726,915	. . . .	21	..	6
Maine . . . . .	35,000	626,915	96,540	23	11	5
Maryland . . . . .	11,124	780,894	319,728	20	6	6
Massachusetts . . . . .	7,800	1,457,351	378,787	7	4	11
Michigan . . . . .	56,451	1,084,059	. . . .	13	..	9
Minnesota . . . . .	83,531	439,706	. . . .	28	..	3
Mississippi . . . . .	47,156	827,922	. . . .	18	..	6
Missouri . . . . .	65,350	1,721,295	. . . .	5	..	13
Nebraska . . . . .	75,995	122,993	. . . .	35	..	1
Nevada . . . . .	81,539	42,491	. . . .	37	..	1
New Hampshire . . . . .	9,280	318,300	141,885	31	10	3
New Jersey . . . . .	8,320	906,096	184,139	17	9	7
New York . . . . .	47,000	4,382,759	340,120	1	5	33
North Carolina . . . . .	50,704	1,071,361	393,751	14	3	8
Ohio . . . . .	39,964	2,665,260	. . . .	8	..	20
Oregon . . . . .	95,274	90,923	. . . .	36	..	1
Pennsylvania . . . . .	46,000	3,521,951	434,373	2	2	27
Rhode Island . . . . .	1,306	217,353	68,825	32	15	2
South Carolina . . . . .	34,000	705,606	249,073	22	7	5
Tennessee . . . . .	45,600	1,258,520	35,691	9	17	10
Texas . . . . .	274,356	818,579	. . . .	19	..	6
Vermont . . . . .	10,212	330,551	85,425	30	12	3
Virginia . . . . .	38,352	1,225,163	747,610	10	1	9
West Virginia . . . . .	23,000	442,014	. . . .	27	..	3
Wisconsin . . . . .	53,924	1,054,670	. . . .	15	..	8

Population of the States in 1790 . . . . . 3,942,270  
 " " " in 1870 . . . . . 38,115,641  
 " " Territories in 1870 . . . . . 442,730  
 Total population in 1870 . . . . . 38,558,371  
 Total number of representatives in 1874 . . . . . 292



**BOOK SECOND.**

**THE PERSONAL RIGHTS OF A CITIZEN OF THE  
UNITED STATES.**

.





## BOOK SECOND.

### THE PERSONAL RIGHTS OF A CITIZEN OF THE UNITED STATES.

---

These rights will be considered under seven heads: First, the right to personal liberty; second, the right to personal security; third, the right to freedom of speech and writing; fourth, the right to freedom of religious faith and profession; fifth, military rights and duties; sixth, the rights and duties of suffrage; seventh, the rights and duties growing out of the domestic relations.

There are many provisions in the constitution intended to secure all these important rights, except those last mentioned. They will be considered in this chapter; and in connection with some of them, the statutory provisions of Congress or of the several States which relate to the same or to connected subjects, and carry into effect the provisions of the constitution and make them specific and practical.

#### CHAPTER I.

#### THE WRIT OF HABEAS CORPUS.

The most efficacious and indispensable of all the provisions of the constitution in respect to personal liberty is the following, which relates to this writ:—

“The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it.” It must be noticed that this writ cannot be suspended, although the public safety may be thought to require it, unless there is at that time rebellion or invasion; and not if either or both of these exist, unless the public safety requires it. A law,

passed by Congress in 1842, concerning the power of the courts or judges of the United States to grant writs of *habeas corpus*, extended this power to all cases of a prisoner or prisoners in jail or confinement, who are subjects or citizens of foreign States, and domiciled therein.

The nature and effect of this writ should be fully understood.

A writ, in legal meaning, is a written command by the sovereign, attested by a competent court, addressed to some person or persons, and requiring him or them to do the thing specified or described in the writ. In this country the people are the supreme sovereigns; then the United States are sovereign, and then each State is sovereign; and in this country writs begin, "The United States of America to," &c.; or, "The people of New York to," &c.; or, "The Commonwealth of Massachusetts to," &c. Usually most writs are addressed to sheriffs, who are the executive officers of the sovereign, and the writ of *habeas corpus* is generally so addressed. Formerly all the writs of England were in Latin; and while we were English colonies, the law and legal processes of England were ours; and both in England and in this country writs are still called by their most important Latin words.

"*Habeas corpus*" means "you may have the body;" and the writ of *habeas corpus* is a command of the sovereign to the sheriff to whom it is addressed to have the body of the person named therein, who is the party deprived of his liberty, and bring him before the court, at a certain place and time, with the cause of his imprisonment. The sheriff executes this writ by bringing the person before the court; and the court then investigates the case, and, if the imprisonment be illegal, commands his discharge.

It will be seen at once that if this writ be properly executed it makes illegal imprisonment impossible; and in law any restraint of a person anywhere, or any illegal arrest, is imprisonment. The extreme importance of this provision to secure personal liberty would seem to be obvious at first sight, and yet we cannot comprehend it fully unless we are taught the lessons of history. For example: the King of France before the Revolution was a despot, with nothing to limit his power or control his will. And why was this? Because he and his ministers could imprison any man in the Bastille, or any other prison, at any time, for no cause whatever but their own will, and keep him in prison at their own pleasure; and this often without letting any person connected with the prisoner know what had become of him. The Revolution came, and put a stop to this outrage upon reason and humanity. Some of the kings of England claimed, and to some extent exercised, the same power; but it was resisted, and was never carried so far in England as in

France; and this is one among the reasons why England escaped the bloody revolution which for a time desolated France. Various laws were passed in England to prevent this illegal restraint of liberty; but they were evaded until, in 1679, a law was enacted giving the writ of *habeas corpus* to all imprisoned persons, and strengthening the writ with various provisions, which made it perfectly effectual. Since that time there has been no arbitrary imprisonment in the British dominions; and our wise fathers inserted in the constitution the clause above stated, to make it certain that there should be no arbitrary imprisonment in the United States.

The provision in the constitution would not of itself effect this purpose, because it does not provide in what manner and by what persons, and for what causes, this writ of *habeas corpus* should be issued or granted. Laws making all these provisions have been enacted by Congress, and by the various States; and very various and well contrived are the provisions which are intended to make this writ an easy, prompt, and effectual remedy for or preventive of illegal restraint. These may be stated generally, thus:—

**I. The writ must be granted as a matter of right to every applicant,** by any of the justices of the higher courts; and if they are absent or out of reach, by any justices of a lower court, down to justices of the quorum. In this respect the law covers a wide range, for the purpose of making it sure that every applicant may find some one who must grant him this remedy.

**II. It makes no difference whether a court be sitting or not,** or where the justice is, when the writ is prayed for, as he must then and there grant it.

**III. It must be granted not only if the person restrained of his liberty himself applies,** but to any one applying for him. If the applicant does not know the name of the imprisoned party, the best description which he can give of him is sufficient.

**IV. The application must be in writing, and must be verified by the oath of the applicant.**

**V. The writ commands the sheriff, or other person to whom it is directed,** to have the body of the person restrained of his liberty without delay before the justice issuing the writ, or before some other tribunal, court, or person competent to try the questions which the case may present; and the sheriff is also usually commanded to summon the person restraining the prisoner to be there also, and bring with him the cause of the restraint; and further, that all parties then and there submit themselves to whatever may be lawfully adjudged or ordered in their behalf. The provisions of the writ vary somewhat, and its language more, but it is always substantially as above.

**VI.** The sheriff, or other officer or person, to whom the writ is directed, must obey promptly, and return the writ forthwith, as directed therein, with a full statement of his doings.

**VII.** If the writ be made returnable to a court, and the court is not then in session, it must be returned before the proper magistrate, in his chambers.

**VIII.** On the return of the writ, the alleged prisoner being present, if possible, the case is tried; and unless legal and sufficient cause for his imprisonment is shown, it is ordered that he be discharged at once; or if the tribunal see good reason to withhold a full and entire discharge, and if he be held for some offence or cause that is bailable, the court, or the magistrates trying the case, may order that he be discharged on giving reasonable bail, which the court or magistrate usually fixes.

**IX.** The party restrained or imprisoned is not discharged, but is remanded into his imprisonment, if it be shown that he is imprisoned by lawful warrant for crime, or in execution, civil or criminal. Some of the State statutes contain these exceptions, others do not, but they are always regarded.

**X.** If a person has been discharged on habeas corpus, he cannot again be imprisoned or restrained of his liberty for the same cause.

**XI.** Finally, the statutes make sure of the issuing of the writ by the court or magistrate applied to, and full and prompt obedience to it by the officer or other person to whom it is directed, by very heavy penalties. Moreover, any person whose application for the writ is refused by one magistrate may apply to another; and the number of those to whom he may thus apply is so large, that it is hardly possible that all of them should be so corrupted or intimidated as not to render due obedience to the law.

This writ, important as it is, is not often heard of in practice; and the reason of this is, that the existence of the right, and the ease and certainty with which the law may be invoked in any case of false or wrongful imprisonment, prevents such imprisonment from being attempted. Sometimes the writ is in these days resorted to by parents of minors who have enlisted without their permission, or by those whose children are illegally withheld from them on any ground. It has been decided that the proclamation of martial law by a military officer is not sufficient to suspend the act, because that can be done only by a legislature.

#### PRACTICE.

Any person desiring the writ may apply to any court or magistrate authorized to issue the same, by complaint in writing, signed

by the party imprisoned, or by some person in his behalf. The complaint should be verified by the oath of the person making the application, or by some person in his behalf.

The complaint need not be in any special form; but it should set forth substantially the following things:—

**First.** The person by whom and the place where he is imprisoned or restrained (naming the prisoner and the person detaining him if their names are known, and describing them if they are not known).

**Second.** The cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the person applying.

**Third.** If the imprisonment or restraint is by virtue of a warrant or other process, a copy thereof should be annexed, unless it is made to appear that such copy has been demanded or refused, or that for some sufficient reason a demand therefor could not be made.

The court or magistrate to whom the complaint is made should, without delay, award and issue the writ of *habeas corpus* substantially in the form below, and the sheriff must forthwith execute the same.

(9.)

A WRIT OF HABEAS CORPUS.

[SEAL.] STATE (OR COMMONWEALTH) OF

To the Sheriffs of our several Counties and their respective Deputies:—

WE COMMAND YOU, That the body of (*name of imprisoned party*), of (*his residence*), by (*name of party imprisoning*), of (*his residence*), imprisoned and restrained of his liberty, as it is said, you take and have before (*name of the court or magistrate to whom the writ is returnable*), a justice of our (*name of court*), at (*place where the court or magistrate will sit to receive the return*), immediately after receipt of this writ, to do and receive what our said justice shall then and there consider concerning him in this behalf; and summon said (*name of party imprisoning*) then and there to appear before our said justice, to show the cause of the taking and detaining of said (*name of party imprisoned*), and have you there this writ, with your doings thereon.

Witness (*name of justice or magistrate issuing the writ*) at (*place of issuing the same*), on this (*time of issuing*) day of \_\_\_\_\_ in the year \_\_\_\_\_

If this writ is issued by the court while in session, it should be signed by the clerk of the court, otherwise by the magistrate issuing the same; and in either case it may be served in any county by a sheriff or deputy-sheriff of the same, or of any other county in the State.

## CHAPTER II.

## THE RIGHT TO PERSONAL SECURITY.

## SECTION I.

## TRIAL BY JURY.

A provision to secure a fair trial to every accused person was made by the constitution, in the third article, which related to the judicial power, by the following clause:—

“The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.”

In the amendments to the constitution, a similar provision for the security of the accused is made in article fifth of the amendments, by declaring that “no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger;” and in article sixth of the amendments, that “in all criminal prosecutions the accused shall have a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, and that this district shall have been previously ascertained by law;” and in the seventh article of the amendments, that “in suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and that no fact tried by a jury shall be re-examined in any court of the United States otherwise than according to the rules of the common law.”

All these provisions and precautions to secure a presentment and a trial by jury are very minute and precise, and might seem to be extreme to one who had not fully considered, under the light thrown on the subject by the history of other nations, the inestimable value of the institution of a jury.

There are two kinds of jury, and each of them is entirely distinct from the other in its functions. Both of them are referred to in the constitution, in the clauses above quoted. The grand jury must consist of twelve, and may be larger, up to the number of twenty-

three. Its duty is to hear complaints brought before it by the prosecuting officer. This the officer does by bringing before the grand jury a bill of indictment, which means a written accusation of some party charging him with a crime, and such evidence as can be offered to support the accusation. This indictment the grand jury either find or ignore, which means dismiss. If they find the bill, which means that they find it to be true, the party charged may then be arrested and put upon his trial. If they dismiss the bill, there is an end of it. The grand jury acts in secret, and only on the evidence which the prosecuting officer brings before them.

**Beside the indictment, the grand jury may make a presentment,** by which they charge a party with wrong-doing of any kind, from their own knowledge, or from any evidence they have; but the prosecuting officer must afterwards frame an indictment founded on the presentment before the party presented can be put to his trial. From this we may see the effect of the provision, that no person shall answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury. This effect is, that a man cannot be put upon his trial by any court or magistrate or officer, at their pleasure, or for any reason, but only on the accusation, solemnly made, by a jury of his countrymen, taken from the community. Here, too, we must go to history if we would know the enormous abuses against which this provision secures the citizens of this country; for we may read there, that when a government, or its members or officers, have the power of charging whom they will, with what crime they will, and bringing him to trial therefor, at their own pleasure, personal liberty then and there becomes impossible: it ceases to exist, because the government has in its hands a means of coercion which nothing can resist.

**The other jury is a trial jury.** Such a jury consists of twelve men, impartially selected, according to law; and they must unanimously concur in the guilt of a prisoner before a conviction can be had.

**The way in which juries, both grand and petit, are selected,** is usually this: jurors for both juries are returned by the sheriff of each county (or, for the United States courts, by the marshal of each district), in obedience to a writ, called a *venire* (which is a Latin word, meaning "to come"), which writ commands him to summon "to come" to the court at the appointed time the proper number of persons. The authorities of every city and town, or sometimes county, put into a box the names of all persons therein qualified and bound to serve as jurors. Usually these are all persons qualified to vote, with some special exemptions. When notice is given them to select and return the names of jurymen, the proper



officer (as determined by statute or usage) draws a name from the box; and if persons are wanted both for grand and petit juries, usually the first twenty-three drawn are returned as grand jurors, and those that come after are for petit jurymen, until the necessary number is made out, which is usually enough to supply two or three juries. The names of these persons are given to the sheriff or marshal, and entered by him in the return of his *venire*. As no one can be called upon to discharge this duty, which is sometimes very burdensome, oftener than once in a certain number of years (usually three), when any one's name is drawn, the day is indorsed upon the paper; and if it be seen that the same person has been drawn within three years, the paper is put back into the box and he is considered as not drawn. The grand jury is "impanelled" when sworn and organized. A petit jury is impanelled when the names are called over, and the first twelve who are present, and are not excused or objected to, are sworn, and set apart as the jury. It is common in most of our courts having much business to impanel two juries; that sitting on the right hand of the court being called "the first jury," and that on the left hand "the second jury." Sometimes, though very seldom, and only when the urgent pressure of business requires it, a third jury is impanelled. The purpose in impanelling more than one jury is, that while one is charged with a case and is deliberating, another case may be tried before another jury. Upon trials before a jury, the court are the exclusive judges of the admissibility or competency of evidence; but if it be admitted, the jury are the judges of its effect and value.

The origin of this institution is lost in the obscurity which hangs over early English history. It probably existed in an imperfect form among the German races who invaded and peopled England. It gradually grew up in that country as the love of freedom and justice grew from age to age, and expressed itself in these and other institutions of the common law. It was unknown elsewhere in Europe, for elsewhere there was not the same vital and enduring love of liberty. For the very reason that this love is paramount and unfettered in this country, and lies at the foundation of all our civil and political institutions, to this country a trial by jury is essentially adapted. It sometimes seems to be inconvenient; and we hear arguments against the reasonableness of submitting questions of extreme difficulty and of the utmost importance to a panel composed of twelve men, who are selected, almost by lot, from all classes in the community, and who cannot be supposed to bring to the weighing of the evidence, and the determining of the questions, any training or adaptation for this peculiar work. Against all these and other arguments against the jury stands the great fact, that

nothing has ever been contrived which, on the whole, works so fairly, is so little open to corruption, and does so much justice. The jurymen are taken right out from the community, and to that community they return. Wise laws and well-adapted precautions guard them, as far as may be, from improper influence; and while this institution, like all other human institutions which must be carried into effect by human beings, is always liable to failure and imperfection, it remains much the best institution for its purpose that has ever been devised. It is a good thing that the framers of our national constitution, and of the many State constitutions which contain similar provisions, were so careful to perpetuate this institution, and that the people are as determined—as there is good reason to believe that they are—to preserve it unimpaired.

There are other provisions in the constitution, intended to secure a fair trial, to which we will allude only generally. These are, that no person accused of and tried for crime shall be compelled to be a witness against himself; that he shall be informed of the nature and cause of the accusation; that he shall be confronted with the witnesses against him; that he shall have compulsory process for obtaining witnesses in his favor, and the assistance of counsel for his defence; and that he shall not be deprived of life, liberty, or property, without due process of law.

## SECTION II.

### NO PERSON SHALL BE TRIED TWICE FOR THE SAME OFFENCE.

The fifth article of the amendments contains this provision: “No person shall be subject, for the same offence, to be twice put in jeopardy of life or limb.”

The reason for this provision is not so obvious as it is certain. It does not apply to civil actions to the same extent. If a person is sued for a debt, and either party fails to maintain his suit or his defence, and afterwards discovers new evidence which will maintain his suit or his defence, he may often, proceeding according to the rules of courts, try his case again. But even in civil suits there is a limit to this; because the whole purpose of the law being to settle questions and terminate disputes, it will not permit a question which has been settled to be tried again, provided the question had been settled after a full and regular trial, and had been the object of direct investigation, and the parties have had their attention drawn to it in such a way as to warrant the supposition that a new trial could only be a repetition of a former trial,—a question tried in

this way, and so settled, shall not be tried again. This rule may be expressed thus: A judgment on the same matter at issue, by a court which has jurisdiction of this matter, and which makes judicial examination into the merits of the question, is a conclusive bar against another trial. In criminal cases, or where a person is accused of and tried for an alleged crime, the rule goes much further, because the reason of the rule goes further. In every such trial the government is the prosecuting party, or the plaintiff; and it would be a very dangerous thing if the prosecuting officer, when he has caused a man to be tried for a certain offence, and on this trial the man has been acquitted, is permitted to bring him up again and again for trial, on the alleged discovery of new evidence, or for any other reason. This might be so great a mischief that the other mischief, which sometimes occurs, can be more safely borne; and this occurs when a guilty man is acquitted for lack of evidence, and after his acquittal new evidence is found, which, if it had been found in season, would have produced his conviction. Hence it is that the rule is established that a criminal once acquitted shall not be tried again on the same charge.

### SECTION III.

#### EXCESSIVE BAIL.

The eighth article of the amendments declares, "**Excessive bail** shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted." This article is an exact copy of a clause in the English Bill of Rights, which was adopted at the revolution of 1688. It provides three further precautions against unjust and oppressive treatment of an accused person by the courts. The meaning of bail is this: the word comes from a Norman-French word, which means "to deliver." When an accused person would be imprisoned to keep him safely until trial, if there are friends who will come forward and become bound for him, under a certain penalty, to be forfeited if he does not appear when called for and stand his trial, he is delivered to them, and they are called his bail. All but the highest offences are bailable, as it is termed; that is, the accused may avoid imprisonment by tendering sufficient bail, to be responsible for him.

It is obvious that a court, under a pretence of taking bail, could keep the accused imprisoned, by requiring so large an amount of responsibility that no bail would be willing to incur it. How large this amount should be in any case must depend upon the circumstances of the case. This question as to the amount of bail ad-

dresses itself to the discretion of the court. If the crime be great, and therefore the need of securing the prisoner for trial is great, the court may and usually do, affix the bail at a large sum, — sometimes a very large sum; although the effect of this may be to prevent the accused from obtaining bail. This is a very common result. We frequently read in the papers that this or that man, accused of burglary, or robbery, is ordered to find bail in a large amount, and in want thereof to be committed to jail; he then goes to jail, almost as a matter of course. This is not excessive bail. It must be remembered that the purpose of taking bail is not to bring money into the treasury, but to secure the presence of the accused when wanted. It sometimes happens that the accused runs away, leaving the bail to pay the sum for which they are bound; but this was not the object in fixing an amount for the bail; for this was to make it reasonably sure that the bail would produce the accused. This bail becomes excessive when it is out of all proportion to the magnitude of the offence, and is much more than enough to give reasonable assurance of the presence of the prisoner. If such bail be demanded, it is a common thing for the accused to apply, by his counsel, to a court having authority in the case, and ask them to reduce the bail; which they will do if good cause be shown.

#### SECTION IV.

##### EXCESSIVE FINES.

**Imposing a fine is one method of punishing a criminal.** History tells us that in England instances occurred repeatedly in which the government impoverished and crushed an obnoxious person by imposing a fine which took from him all his property. More than this, as a criminal, when fined, is ordered to be committed to jail until the fine be paid, had such a fine been imposed as it was impossible for him to pay, this was, in fact, a sentence to imprisonment without relief. It was to prevent such abuses as this that this clause was introduced into the English Bill of Rights, and copied into our constitution.

##### CRUEL AND UNUSUAL PUNISHMENT.

**This, too, was one of the ways in which history tells us that an arbitrary government has gratified its vengeance against the objects of its wrath.** It was well to place the clause in the constitution, as a perpetual reminder that such enormities must not be practised here. In this country all punishments are determined by

law; these are fine or imprisonment, with or without solitary confinement, and with or without hard labor; but the amount of the fine, and the length and character of the imprisonment, are determined by the statutes, within certain limits.

## SECTION V.

### BILL OF ATTAINDER.

In the constitution, immediately after the clause prohibiting the suspension of the writ of *habeas corpus*, there follows this clause: "No bill of *attainder* or *ex post facto* law shall be passed."

"*Attainder*" is an English law term, derived from Latin and French words, which signify to "stain" or "taint." It means, that one who was convicted of treason, or other great crime punishable by death, was tainted or corrupted in blood. The effect of which was a forfeiture of all his possessions, real or personal, and an incapacity of any heirs inheriting from him. In England, when any one holding a heritable title was attainted, this title was extinguished, and did not go to his descendants. A bill of attainder means an act passed by Parliament, by which, without a judicial trial, a person is convicted of some great crime, usually treason, which is punishable by death, with loss of all property. The objection to it was, that this extreme punishment was inflicted by a legislative body, and not after a trial in the law courts, and by due process of law. In the history of England this method was often resorted to for removing by death those who fell under the displeasure of the king or parliament. It was, of course, a tyrannical abuse; and because it was this, or so liable to become this, it was prohibited by the constitution.

Sometimes in England another kind of bill, called a "bill of pains and penalties," was passed to punish an obnoxious person; and it differed from the bill of attainder only in this, that it did not inflict the punishment of death. It has been solemnly adjudged that the prohibition in the constitution against a bill of attainder extends, in its force and meaning, to a bill of pains and penalties.

## SECTION VI.

### EX POST FACTO LAW.

The ninth section of the first article prohibits Congress from passing an *ex post facto* law; and the tenth section of the same article extends the prohibition to the several States. The literal

meaning of these Latin words, which were taken from Latin (or Roman) law, mean "from after the fact." It is an awkward phrase, either in Latin or English. It may be defined thus: An *ex post facto* law is one which, being passed after an act is committed, makes that act punishable, although it was not punishable when committed; or makes it punishable in a different and severer manner from that in which it was punishable when committed. This definition shows of itself the reasonableness of the prohibition; for it is obvious to common sense that the plainest justice requires that a man should not be punished for violating a law which was not a law when he committed the act; and that if he violated an existing law, he should know or have it in his power to learn what penalty or punishment he took the risk of.

## SECTION VII.

### THE RIGHT TO ASSEMBLE AND PETITION GOVERNMENT.

The first article of the amendments to the constitution prohibits Congress from passing any law abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances. With this we close the list of the provisions of the constitution intended to secure to the people their rights.

It will be observed that there are here two rights secured: one is to assemble peaceably; the other is to petition the government. They need not go together. The people may assemble to discuss their grievances, and determine upon mutual consultation what remedies they will seek. If they do this peaceably, the assembly must not be prevented nor interfered with. And one or more of the people has the right to petition Congress, and ask for the redress of whatever seems to him or to them a grievance, with or without assembling with others for that purpose.

Both of these provisions were inserted in the constitution because history had taught our fathers that they were necessary. We exercise them continually, in any way we please, and no one thinks of preventing our doing so. We may, therefore, think that these rights belong to us naturally and necessarily, and wonder that the framers of the constitution thought it necessary thus solemnly to assert and secure them. But they knew how hard it had been to maintain the free exercise of these rights in England; and that the framers of the English Declaration of Rights, at the Revolution of 1688, inserted them in that declaration, because they knew that the denial or violation of these rights had been one of those manifesta-

tions and instruments of tyranny which rendered that revolution necessary.

**And Congress have perhaps yet to learn, unless they have already learned by experience, another thing about them.** Congress would not attempt to enact a law preventing any persons from sending them a petition. This is made impossible, by the provision in the constitution. But it is possible for either House of Congress to treat a petition with disrespect and contumely, and in this way do what they can to prevent the exercise of this right, and to make it ineffectual.

**It need not be said that this is a virtual breach of their duty to the constitution, and an actual disregard, if not of its words, yet of its principles, as certain as if they enacted a law in defiance of its express language.** If, however, the history of this country shows that in a time of excessive party excitement such an abuse was possible, it shows also that, if firm and brave men resist it stubbornly, they will surely defeat it. It may well be hoped that whatever has been seen of a disregard of this constitutional provision in times past, carried with it a lesson which will prevent a repetition of the offence.

## SECTION VIII.

### IMPAIRING THE OBLIGATION OF CONTRACTS.

**We add this topic to this section, although it belongs rather to the protection afforded by the constitution to the rights of property.**

**The section of the constitution last quoted declares that no State shall pass "any law impairing the obligation of contracts."**

**The wisdom and justice of this prohibition are obvious.** Every man acts, or should act, under the law; and whenever he does anything in conformity with the law, he has a perfect right to trust to the law to support him in what he has done. If he makes a contract with his neighbor, he has a right to believe that the law will secure to each of them the rights that either party acquires by the contract; and will enforce upon each of them the obligations imposed upon either party by the contract. If, now, a State has the power to interfere, and declare that contract void, and annul or change its obligations, it is plain that the whole business of the community would be at the mercy of legislators; and all who did business of any kind would work in the dark, and be wholly uncertain whether what they were doing would have any force or effect.

**Repeatedly have our citizens invoked this provision for their protection, and found it efficacious to secure their rights; and many**

and very various are the questions which have arisen under this provision. We cannot here give an account of them, for it would occupy a large part of the volume. But some things we may say, to show how this provision works.

**It is held that an act of incorporation is a charter between the State and the stockholders.** Therefore, if a charter for a bridge declares that no other bridge shall be built within a certain distance, a law authorizing another bridge to be built within that distance is held by the courts to be unconstitutional, and therefore void.

**If a bank be chartered with certain powers, an act taking away or interfering with those powers, or impairing them to the injury of the stockholders, is unconstitutional and void.**

**A grant of land by a State, and a compact between two States,** are such contracts, and cannot be subsequently interfered with, unless by consent. But an act creating a salaried office is not such a contract that it cannot be repealed; but the salary due before any change in the law must be paid in the terms of the law.

---

### CHAPTER III.

## THE RIGHT TO FREEDOM OF SPEECH AND OF WRITING.

The same article of the constitution from which we last quoted provides that Congress "shall make no law abridging the freedom of speech or of the press." Here again we see that this provision applies only to the laws of Congress; but similar provisions are made by law in the other States, and in some of them by their constitutions. The effect of these provisions is, that every man may have a right to speak, write, and publish his opinions upon any subject whatever, without the need of any prior license or permission, and without any prior restraint. Nevertheless, every man both speaks and publishes upon his own responsibility; for it is possible to do a grievous wrong to another, in his rights, his peace, his property, and his reputation, by a wrongful speaking or publishing. He who commits this offence is punishable therefor, according to the character of his offence, either by indictment, as for a wrong committed against the public; or by an action, as for a wrong committed against an individual. This offence of wrongful speaking or publishing to the injury of the community or of a person is either a



libel or a slander, and the law on these subjects shall be briefly stated.

#### LIBEL.

The difference between a libel and a slander consists in this: a libel consists in injurious words against another, or harmful to the community, which are published. Injurious words spoken, but not published, are not a libel, but they constitute a slander. One cannot be indicted for slander, but only for libel. Publication may be by writing or printing, or by a picture or caricature, if these are made with malicious or mischievous intent towards individuals, magistrates, or government: and any publication is indictable as a libel which blasphemes God, or brings contempt or ridicule on the Christian religion; or is immoral, corrupt, or obscene; or calumniates the law or government of the country; or degrades and abuses the administration of justice; or imperils the peace of the country by personal abuse of a foreign sovereign or his officers; or blackens the memory of one who is dead, or the reputation of one who is living. And if the matter is plainly to be understood as meaning or intended to mean any of these things, it is libellous, however it may be expressed. Publication means the holding forth to the public in any way whatever. The publication must be malicious; but if the writing is on the face of it libellous, the law presumes that it was published from a malicious intention. We have said that the publisher of a libel may be punished criminally by indictment. He is also subject to an action for damages by the party libelled; and both of these remedies may be pursued at the same time.

#### SLANDER.

Injurious words spoken, but not published, constitute slander. The offence of slander is not indictable: it is considered as an injury only to the person slandered; and he may recover damages for the injury by a proper action. Slandorous words are divided in law into two classes. One consists of those words for which damages may be recovered, without proving special damage; and the other, of those for which the slandered party can recover damages only by proof that he has suffered damage from them. The first class of words, which are called words in themselves actionable, are those which, first, impute some offence to another for which that other might be subjected to legal process as a criminal; second, those which impute to him a disease or distemper which makes him dangerous in or unfit for society; third, the want of integrity or capacity in the conduct of any profession, business, or trade, or in the discharge of

the duties of any office of profit. The law supposes that every person slandered in either of these ways must suffer damage from the slander, and leaves it to a jury to determine how much that damage is.

For injurious words of any other description, affecting his reputation or standing in society, the slandered person may have his action, and will recover such damage as he can prove to the jury that he has sustained from the slanderous words. The best authority holds that the repetition of oral slander which is already in circulation lays the person who repeats it open to an action.

#### TRUTH AS A DEFENCE.

In all actions of slander, if the defendant prove that the words spoken were true, this is a sufficient defence for him, however mean and malicious were his motives and his conduct. This is to be regretted; it would have been better to apply to actions for slander, or unpublished words, the same rule in respect to truth as a defence which is applied to actions for libel, or published words. This rule, after a good deal of difficulty and conflict in the courts, is now established as law all over this country. The words of the rule vary in different places; but it is always substantially this: that the truth of the words spoken is a perfect defence, provided that the words were spoken from good motives and for justifiable purposes.

---

### CHAPTER IV.

## FREEDOM OF RELIGIOUS FAITH AND PROFESSION.

The first article of the constitution provides that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; and in the sixth article it is provided that no religious tests shall ever be required for office. These are the only provisions in the federal constitution upon this subject.

It will be observed that these clauses (unlike many of those already considered) apply only to laws of the United States: they place no restraint whatever on the action of the States, and make no provision for protecting the citizens of the respective States in their religious liberties, against the laws of the States.

The constitution of some of the States did not fully respond to this entire freedom of religion. Religious tests, to a certain extent, were retained in the constitutions of New Hampshire, Massachusetts, New Jersey, Maryland, Tennessee, Mississippi, and North Carolina. In this last State, by the constitution of 1776, no person denying the divine authority of the Old or New Testaments, or the truth of the Protestant religion, could hold a civil office; but by the constitution of 1835 the word "Christian" was substituted for the word "Protestant." But in all these, as well as the other States, in point of practice, the utmost religious freedom may be said to prevail. The practical law of the country may now be stated in the words of the contract or concession made by William Penn in 1676, with or to the planters and proprietors of the province of west New Jersey. These words are: "No man on earth has power or authority to rule over men's conscience in religious matters; and no person shall be called in question, or punished or hurt in person, estate, or privilege, for the sake of his opinion, judgment, or worship, in the concerns of religion."

In the Ordinance of Congress of 1787, for the government of the territory of the United States north-west of the river Ohio, it was declared to be a fundamental and unalterable principle in the compact between the original States and the people and States in that territory, that no person demeaning himself in a peaceable and orderly manner should ever be molested on account of his mode of worship or religious sentiments. And this may be regarded as at this day the practical law of the United States.

---

## CHAPTER V.

### MILITARY RIGHTS AND DUTIES.

The constitution gives power to Congress to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. The constitution makes no provision whatever for regulating the militia, but leaves that altogether to Congress and to the States. Congress has passed acts authorizing the President to call forth the militia in certain exigencies; and it belongs exclusively to him to judge whether those exigencies have occurred and placed in his hands this authority. His decision on this subject is conclusive. The militia, however, is not the militia of the United

States, but of the States respectively; and when the President calls out the militia, he makes his requisitions directly upon the executive of the States; and when the militia of a State is so called into the service of the general government, and mustered at the place of rendezvous appointed by a national authority, it then, and not before, becomes a national militia.

Although the constitution gives to Congress power to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, this power has never been fully exercised. Arms have been distributed to the States; but they have been left to organize, discipline, and arm their militia at their pleasure. The same paragraph reserves to the States the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress. "Militia" undoubtedly means the body of arms-bearing citizens, as distinguished from the regular army. In 1863 Congress passed an act declaring that all citizens of the United States, &c., "are hereby declared to constitute the national forces, and shall be liable to perform military duty in the service of the United States, when called out by the President for that purpose." In New York it has been held that this act was unconstitutional, and in Pennsylvania that it was constitutional; both the decisions being by single judges.

The second article of the amendments to the constitution provides that a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

---

## CHAPTER VI.

### THE RIGHT AND DUTY OF SUFFRAGE.

Citizenship and suffrage are often confounded. They are entirely distinct things, although similar in some respects, and frequently united, as we shall see in what follows.

By the constitution Congress has power to establish a uniform rule of naturalization; and laws for that purpose have been made. Their effect is to make a person born in foreign countries, and residing in this country, stand here upon the same footing as one that is born here, if he takes the steps pointed out by these laws. This subject has already been fully considered.

Under the federation which preceded the present constitution, the general government could not exercise the power of naturalization, the State alone having that power. But as naturalization made a man a citizen, and a citizen of one State was a citizen of every other, it followed that any one State, in any way that it thought proper, might invest a foreigner with all the privileges of citizenship in every other State. The inconvenience of this was so obvious, that when the constitution was formed no objection was made to giving to the United States the exclusive power of naturalization. Although the exercise of this power is not expressly denied to the States, yet it is now firmly established that this power belongs to the United States exclusively. At that time, the people of all the States regarded this country as an asylum for the oppressed in Europe, and desired a large immigration, to help in developing the resources of the country. It was among the grievances narrated in the declaration of independence that the King of England had endeavored to prevent the population of the colonies, by obstructing the laws for the naturalization of foreigners.

Such laws were early made, and have since been repeatedly amended. We gave them in our section on naturalization, as they now stand; and they may be regarded as the result of the best wisdom of Congress in making laws which, on the one hand, should give all reasonable facility to a foreigner who wishes to become a citizen with us, and, on the other hand, should not make this boon of citizenship too cheap, and so easy as to become liable to abuse. But it must be remembered that citizenship is not suffrage; and that naturalization, of itself, confers no right of suffrage.

A citizen of the United States must be a citizen of that State or territory in which he resides. It is there he must exercise the right of suffrage, if he possesses that right. But as citizenship of itself gives no right of suffrage, that must depend upon the law of the State where he resides, the constitution having left to the States this power; and each State prescribes its own rule, or has its own law of suffrage. Thus, a foreigner coming to Massachusetts, and residing there, may be naturalized, and thus become a citizen of the United States, and of that State, and live there all his life without the right of suffrage, unless he learns how to read the constitution in English, and write his own name.

#### THE RIGHT OF SUFFRAGE.

This right we state below as it is given by the constitution of each State in the Union, which we enumerate alphabetically. It may be previously remarked that many of the constitutions confine

the right of voting to white male persons. But the fifteenth article of amendments to the constitution declares that "the right of citizens of the United States shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude." In stating the provisions of the several States concerning the right of suffrage, we omit, therefore, the word "white." We omit, also, the requirements that the person shall be twenty-one years of age, and that he should take a prescribed oath to support the constitution and laws of the United States and of the State in which he offers his vote; both these requirements being common to all the State constitutions. For a similar reason, the word "male," generally found in the statutes regulating suffrage, is omitted. All the States require residence for a certain time within the State or county or township in which they offer to vote; but soldiers and sailors in the service of the United States do not acquire a residence by being stationed in the State; and this provision is specified in some of the constitutions, but is not mentioned in this abstract; nor is the exception of the insane, lunatics, and paupers, which is universal. Persons convicted of infamous crime are excepted generally; and in some States, those who aided in any way the recent rebellion. It is sometimes stated expressly that a pardon or amnesty would remove these disabilities; and this would no doubt be the effect generally.

**ALABAMA.**—Every person has a right to vote who is a citizen of the United States, and has resided in the State one year next preceding the election, and the last three months thereof in the county in which he offers his vote. Persons convicted of treason, embezzlement of public funds, malfeasance in office, bribery, or crime punishable by imprisonment, lose the right of suffrage.

**ARKANSAS.**—In this State a foreigner may acquire the right of suffrage before he becomes a citizen of the United States; for every person has this right, if he were born in the United States, or has been naturalized, or has legally declared his intention of becoming a citizen of the United States. He must also have resided in the State six months next preceding the election, and be at the time of voting a resident of the county in which he votes. Exceptions are made in the case of criminals, as above, in Alabama, and also of those who during the rebellion took the oath of allegiance to the United States, and afterwards aided in any way the cause of the rebellion.

**CALIFORNIA.**—Every person may vote who is a citizen of the United States, or, having been a citizen of Mexico, elected to become a citizen of the United States under the treaty of peace of 1848,

and who has resided in the State six months, and in the county or district in which he offers his vote thirty days next preceding the election. Persons convicted of any infamous crime are excepted.

CONNECTICUT.—Every person has the right to vote if he be a citizen of the United States, and has resided in the State and in the town or city in which he offers to vote six months, is of good moral character, and is able to read any article of the constitution, or any section of the statutes of the State. Persons are excepted who are convicted of bribery, forgery, perjury, duelling, fraudulent bankruptcy, or other offence for which an infamous punishment is inflicted.

DELAWARE.—Every person has a right to vote who is a citizen of the United States, and has resided one year in the State, and the last month of that year in the county in which he offers his vote. If he be over twenty-one, and under twenty-two, he may vote without having paid any tax; but if he be over twenty-two, he must have paid a county tax within two years before the election which was assessed, and six months, at least, before the election at which he offers his vote. Felons are excepted, and the legislature may make forfeiture of the right of suffrage a punishment for crime.

FLORIDA.—Every person has the right to vote who is a citizen of the United States, or shall have declared his intention to become such a citizen, in conformity with the naturalization laws. He must have resided in the State one year, and in the county in which he proposes to vote six months, next preceding the election at which he offers his vote. No person under guardianship, and no person convicted of felony, shall be allowed to vote.

GEORGIA.—Every person has the right to vote who is a citizen of the United States, or who has declared his intention to become a citizen of the United States, according to law. He must have resided in the State six months next before the election, and in the county in which he offers his vote thirty days, and paid all taxes required of him for the year next before the election. There is a further provision, that if he was a resident of the State at the time of the adoption of the constitution he has a right to vote. Those who have been convicted of infamous crimes, and persons who engage in a duel, or send or accept a challenge, or aid in a duel, are disqualified.

ILLINOIS.—Every person has a right to vote who is a citizen of the United States, and resided in the State when the constitution was adopted, or has resided there one year before offering his vote, and in his election district thirty days. The general assembly may pass laws excluding persons convicted of infamous crimes.

INDIANA.—Every person has a right to vote who is a citizen

of the United States, and has resided in the State six months, and is native born, or if, being foreign born, he has resided in the United States one year, and in the State six months, and has legally declared his intention to become a citizen of the United States. The general assembly may pass laws of exclusion, as in Illinois.

**IOWA.** — Every person has a right to vote if he be a citizen of the United States, and has resided in the State six months, and in the county in which he offers to vote sixty days. Persons convicted of infamous crimes are excepted.

**KANSAS.** — Every person has the right to vote who is a citizen of the United States, or, if foreign born, has legally declared his intention to become a citizen. He must have resided in the State six months, and in the township or ward in which he offers his vote thirty days. Those under guardianship, and persons convicted of treason or felony, or persons who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or shall go out of the State to fight a duel, and those dishonorably discharged from the service of the United States, or guilty of defrauding the United States, or any State, or who have borne arms against the United States, or aided in the attempted overthrow thereof, are excepted.

**KENTUCKY.** — Every person has a right to vote if he be a citizen of the United States, and has resided two years in the State, one year in the county, and sixty days in the precinct in which he offers his vote.

**LOUISIANA.** — Every person has the right to vote who is a citizen of the United States, who has resided one year next before he offers his vote within the State, and the last ten days of that year within the parish, except those disfranchised by this constitution, and persons under interdiction, and all persons convicted of treason, forgery, bribery, perjury, or other crime punishable by imprisonment; also all those persons who held office or took part in any way under the organization styled "The Confederate States of America," until he acknowledges the rebellion to have been both morally and politically wrong, and that he regrets all aid he may have given it.

**MAINE.** — Every person has a right to vote who is a citizen of the United States, and who has resided in the State three months before election. Persons under guardianship are excepted.

**MARYLAND.** — Every person has a right to vote who is a citizen of the United States, who has resided one year within the State, and six months within the district or county in which he offers his vote. The exceptions are persons under guardianship, and persons convicted of larceny or other infamous crime.



**MASSACHUSETTS.** — Every person may vote who is a citizen of the United States, and has resided one year within the State, and six months within the city or town in which he offers his vote, and has paid a tax within two years, provided he is able to read the constitution in the English language, and write his name. No naturalized citizen can vote, or be chosen to office, unless he has resided within the jurisdiction of the United States for two years subsequent to his naturalization. The exceptions to the right of voting are persons under guardianship.

**MICHIGAN.** — Every person has a right to vote who is a citizen of the United States, or who has declared his intention of becoming a citizen six months next preceding the election, and has resided in the State three months, and in the township or ward in which he offers to vote ten days, next preceding the election. Any person who may be engaged in a duel, either as principal or accessory, loses the right of suffrage.

**MINNESOTA.** — Every person has a right to vote who is a citizen of the United States, or, being foreign born, has declared his intention to become a citizen, and persons of Indian blood, in whole or in part, who have become civilized, and are declared capable of exercising the franchise aright by some District Court in the State only they who have resided one year in the United States, and four months within the State, and ten days next before the election in the district, have the right to vote. No person under guardianship, or person convicted of treason or felony, shall be allowed to vote.

**MISSISSIPPI.** — Every person has the right to vote who is a citizen of the United States, and who has resided six months in the State, and one month next before the election in the county in which the election takes place. Persons disqualified by crime, and Indians not taxed, are excepted.

**MISSOURI.** — Every person has a right to vote who is a citizen, or has legally declared his intention of becoming a citizen of the United States, as much as one year, and not more than five years, before he offers his vote, and has resided in the State one year, and in the county, city, or town sixty days. After the year 1876 new voters must be able to read and write, unless prevented by physical disability. Persons are excepted who aided the enemies of the United States, foreign or domestic, in any way whatever.

**NEBRASKA.** — Every person has a right to vote who is a citizen of the United States, and persons of foreign birth who shall have declared their intention to become citizens, if they have resided in the State, county, precinct, and ward for the time provided by law.

**NEVADA.** — Every person has a right to vote who is a citizen of

the United States, and shall have resided in the State six months, and in the district or county thirty days, next preceding the election. But no person who has been convicted of treason or felony in any State or Territory of the United States, or who has borne arms against the United States after he was eighteen years of age, or held any office under the so-called Confederate States, shall be allowed to vote.

NEW HAMPSHIRE. — Every inhabitant of each town in this State, and of each unincorporated place whose inhabitants may be required to assess taxes upon themselves for the support of government, being a native or naturalized citizen of the United States, excepting persons excused from paying taxes at their own request, shall have a right to vote in the time or place in which he dwells and has his home.

NEW JERSEY. — Every person has a right to vote who is a citizen of the United States, and has resided in the State one year, and in the county five months, next before the election, and is at the time a resident in the township or ward, and has not been convicted of a crime which would incapacitate him from giving testimony in court.

NEW YORK. — Every person has a right to vote who has been a citizen for ten days, and an inhabitant of the State for one year, and a resident of the county four months, and a resident of the district thirty days, all next preceding the time of voting, and has not made and is not interested in any bet or wager depending upon the result of the election, and has not voted at the election, and has not been convicted of an infamous crime.

NORTH CAROLINA. — Every person has a right to vote who was born within the United States, or, if foreign born, has been naturalized, and has resided in the State twelve months, and thirty days in the county, next preceding the election. Persons are excepted who deny the being of an Almighty God, or have been convicted of an infamous crime, or of malfeasance in office.

OHIO. — Every person has a right to vote who is a citizen of the United States, and has resided in the State one year next preceding the election. The constitution of the State authorizes the legislature to prescribe a term of residence in the county, township, or ward in which the voter resides.

OREGON. — Every person has a right to vote who is a citizen of the United States, or, if of foreign birth, has declared his intention of becoming a citizen, and shall have resided in the United States one year, and six months within the State, next preceding the election. The legislature may pass laws excluding those who are convicted of infamous crime.

PENNSYLVANIA.—Every person has a right to vote who has been a citizen of the United States for one month, and has resided in the State one year, and in the election district where he offers his vote two months, next preceding his election; and if, being twenty-two years of age or more, he has paid a State or county tax, assessed at least two months and paid at least one month before the election. If challenged for receiving any reward, &c., for his vote, he must swear (or affirm) that the charge is untrue. And any one guilty of bribery, fraud, or violation of an election law is for ever disqualified from holding office, and is deprived of the right of suffrage for four years.

RHODE ISLAND.—Every citizen of the United States who has had his residence in the State two years, and in the town or city in which he offers to vote six months, next preceding the time of voting, whose name was registered in the office of the clerk of the town where he resides on or before the last day of December in the year next preceding the time of his voting, and has paid within the year next preceding his offer to vote a tax to the amount of one dollar, including in such tax a tax upon his property in the town in which he offers to vote, valued at least at one hundred and thirty-four dollars. Persons are excepted who are convicted of bribery or any infamous crime.

SOUTH CAROLINA.—Every person has the right to vote who is a citizen of the United States, and has been a resident within the State one year, and in the county in which the election takes place sixty days, next preceding the election. The exceptions are, that no person while kept in any almshouse or asylum, or confined in any public prison, shall be allowed to vote or hold office. The legislature may pass laws excluding persons convicted of treason, murder, or robbing a dwelling.

TENNESSEE.—Every person has a right to vote who is a citizen of the United States, and a resident of the county in which he offers his vote six months next preceding the election. Persons convicted of infamous crime are excepted.

TEXAS.—Every person has the right to vote who is a citizen of the United States, or has legally declared his intention to become a citizen, and has resided in the State one year next preceding the election, and the last six months within the district or county in which he offers to vote. Persons are excepted who have been convicted of felony.

VERMONT.—Every person who is a citizen of the United States, and has resided in the State one year next before the election, and is of a quiet and peaceable behavior, and a citizen of the United States, and takes a prescribed oath to give his vote as he shall judge will most conduce to the best good of the State.

VIRGINIA. — Every one has a right to vote who has been a citizen of the United States, and a resident of the State twelve months, and of the county, city, or town in which he shall offer to vote three months, next preceding the election. The exceptions are: persons convicted of bribery in any election, embezzlement of public funds, treason, or felony; and one who has fought a duel, or sent or accepted a challenge, or knowingly conveyed a challenge to fight a duel, or aided or assisted in any manner in fighting a duel.

WEST VIRGINIA. — Every person has a right to vote who is a citizen of the United States, and has resided in the State one year, and in the county in which he offers to vote thirty days, next preceding the election. But no person who is convicted of bribery in any election, embezzlement of public funds, treason, or felony, is allowed to vote. No person who, since the first day of June, 1861, has given or shall give aid to the rebellion against the United States shall be allowed to vote, unless he has volunteered into the military or naval service of the United States, and has been or shall be honorably discharged therefrom.

WISCONSIN. — Every person has a right to vote who is a citizen of the United States, or, if of foreign birth, has declared his intention of becoming a citizen, and has resided in the State one year next preceding the election. No person under guardianship, or convicted of treason or felony, can vote.

**We have here given the laws and rules of each State concerning the right of suffrage; and what shall we say concerning the exercise of this right? The first thing to be said certainly is, that the importance of a wise exercise of this right is to be measured by the value of the whole prosperity of the country and all its well-being, and the preservation of our constitution, with its inestimable advantages.**

**But more than this ought to be said; for, without being an alarmist, it may well be thought that there are symptoms of danger, and perhaps a growing danger, in this respect. The sense in which the very word "politics" is now regarded is some sign of this. This word meant originally, and should mean now, the science of conducting the public policy of a country with wisdom and justice. But does not a certain discreditable meaning now attach to this word? In so much that one who is said to be devoted to politics, or an earnest politician, is discredited by this statement. No one says so with the intention of praising him, nor would he accept the statement as praise.**

**It is not difficult to see the reason for this. Politics have become a trade, and the politician is he who deals in the trade of politics. From this circumstance and other causes has come about the present condition of things; namely, that the vast majority of the people hold themselves aloof from politics, and, except as they are stirred up by party excitement when election day comes, take no interest in it. In fact, the merchant, farmer, trader, mechanic, and store-keeper, who attends to his own business, keeps out of politics that he may do so, and likes to have it understood that he leaves politics for those who make it their business. A very large percentage of the voters of every State abstain from voting, and a considerable proportion of the most respectable men in every State refuse to hold office.**

**All this is a most wretched mistake. It leaves the political business of the country to be done by a very few persons, who are certainly not the best adapted to do this business well.**

**The possible forms of government are said to be three: a monarchy, which is the government of one; a democracy, which is the government of many, or of all; and an oligarchy, which is the government of a few. There have been in history several instances of a government by an oligarchy. In some of these instances a few men have gained possession of political power by violence; in others they have held it by belonging by birth to a caste which claimed and held governmental authority.**

**Of all these three forms of government, an oligarchy is certainly the worst; and is there not some danger, at least some possibility, of our degenerating into the very worst form of this worst method of government? That is to say, of the actual government of this country falling into the hands of an oligarchy who have possessed themselves of power by mere corruption.**

**Let me repeat this statement, for I would not be misunderstood: Is there not some danger that the actual control and direction of public affairs may fall into the hands of a few men—an oligarchy—who gain their power by corrupt means. And this oligarchy by corruption will sustain its power, and will recruit its ranks from those who begin by being the tools of the oligarchy, and live on the crumbs which fall to them during their apprenticeship to corruption, until by superiority in audacity, contrivance, and utter want of principle, they in their turn get to be leaders.**

**I know that this sad picture is not a true representation of all parts of our country, and some of my readers may wonder that I should have drawn it in such dark colors. But it is even now a true portrait of some parts; and if during the next thirty years, corruption should increase and advance as much as it has done in the**

last thirty years, would my picture fall far short of a true portrait of the whole?

When we remember the means by which a large proportion of those who hold office were put in office; when we remember how customs are established among us, in all parts of the country, by which caucuses and primary meetings, that few attend but those personally interested, begin the work, and then, by a series of contrivances well adjusted for their purposes, a few who hold the wires control elections; when we remember these things, and with them the corruption which has grown enormously within the last few years, and now infects or threatens almost every department of government, great or small, — and is become so bold that it refuses to pay to honesty the poor tribute of hypocrisy, — have we not cause for fear?

This country is by its institutions a representative democracy; and however we may be dazzled by our marvellous prosperity, which is now the wonder of the world, can we not discern that there is some possibility at least that a worm is gnawing at the roots of the tree which has grown so high and spread so widely?

This country, I have already said, is a representative democracy. Our great parties take different names, and will continue to do so; but there can never grow up in this country a party which avows a purpose of taking the government from the people. But any party, call itself what it may, which lends itself, consciously or unconsciously, to the schemes of trading politicians, is just so far working to take the government from the many and give it to the few, who are able successfully to cheat the many.

If we look around us and compare the present with the past, and observe the steps by which the politics of this country have come into their present condition, is there not a possibility, whatever party may at one time or another gain the ascendancy, and whatever party name or watchword may for a time have power, that there is growing through it all an oligarchy which seeks to confound itself with the people, that it may use the people as their tool, and to acquire the control of affairs by false pretences, asserting vociferously a sympathy with the people, when, in fact, its whole aim is to make use of the people without their actual and intelligent consent? As it is not possible to do this by violence, it is, or will be, done by fraud and falsehood.

If there be this danger or possibility, what is the remedy? That one which this subject of suffrage leads me at once to suggest, is, that every voter in this country should remember that politics is his business, — that it is a most important part of his business. Very many farmers, merchants, and traders in this country — good, honest,

and industrious men — devote themselves to what they consider their business, and spare no pains to avoid mistakes which would bring on them disaster, and to adopt such courses as promise to make them comfortable and successful. How happens it that they forget that very much of their comfort and success, even their pecuniary success, is involved in the good conduct of government, in the adoption of wise measures intended for the good of the whole, in the suppression of fraud and the defeat of corruption, and in the prevention of those measures which will subserve the interests of a few, and are carried out by these few through the men they send into office?

Nothing is more certain than this; and, at the same time, nothing is more certain than that the people at large do not seem to recognize this truth, or at least to act upon it. The enormous resources of this country, and its universal industry and thrift, give us, and probably for a time will give us, great prosperity, let the government and legislation of the country be conducted as they may. But if the whole people would awake to the truth, and see clearly how much of their personal success and well-being depends in the long run upon the conduct of government; and if every man, not because he is moved by partisan motives, but because of the convictions growing out of his study of the condition, prospects, and wants of the country, does what in him lies to see that honest and capable men are placed in authority, and that neither traders in nor gamblers for political power hold the places which better men should fill, — how much fewer would be those panics and revulsions which now so often bring distress on multitudes!

How little need there would then be for the uprising of classes or sections of the people to cast off burdens imposed upon them. Legislation might still be sometimes mistaken, and measures adopted which do not promote the common welfare; but such mistakes would not be frequent; and the effort to remove them and make the law better would not be resisted by a class of politicians whose power depended upon corruption and falsehood: for their power would have come to an end, because the whole people cannot be corrupted, nor, if they will but attend to their true interests, be for any length of time blinded and cheated.

## CHAPTER VII.

THE RIGHTS AND DUTIES GROWING OUT  
OF THE DOMESTIC RELATIONS.

## SECTION I.

## PARENT AND CHILD.

The obligation of the father to maintain the child is, and always has been, recognized in all civilized countries in some way and in some degree. The infant cannot support himself: he would perish if others did not supply him with the means of subsistence; and the only question is, whether the public (that is the State) shall do this or his parent. Justice, equally with the best affections of our nature, answers that it is the duty of the parent. But upon some points it is not entirely settled how far this duty is a legal obligation.

We should say, however, that a consideration of all the authorities justifies us in stating as strongly if not universally prevailing rules in this country, the following: First, if goods supplied to an infant are necessities, the father's authority is presumed, and he is therefore liable to pay for them, unless he supplies them himself or was ready to supply them; second, when the infant lives with the father or under his control, his judgment as to what are necessities will be so far respected that he will be held liable only for things furnished to the infant to relieve him from absolute want; third, if the things supplied are strict and absolute necessities, needful for the child's subsistence, or if the child is living away from the parent under circumstances which indicate a desertion by the parent, or that the child has been expelled from his house, or caused to leave it by the wrongful acts of the parents, then whosoever supplies the wants of the child, may recover their cost or value from the parent; fourth, if the goods supplied were proper and beneficial to the child, but were not strict and absolute necessities, the supplier can recover from the father only by proving that he authorized the supply. But slight evidence is held to be sufficient to prove such authority, as if they were clothes, and the father saw the son wear them, or knew that he had received them, and made no objection when he might have done so, he must pay for them.



The word "necessaries" must be interpreted according to the circumstances of the case. If the child be of sufficient age and strength to earn by proper exertions the whole or a part of his subsistence, it will not be deemed "necessary" that such aid should be rendered to him as it would be necessary to give to an infant incapacitated from contributing to his own support, by tender years or by debility of mind or body. We give, as closely connected with this subject, the law concerning infants, the law of guardian and ward, and the law of apprenticeship.

#### INFANTS OR MINORS.

Generally, all persons may bind themselves by contracts. But some are incapacitated. The incapacity may arise from many causes; as from insanity, or from being under guardianship, or from alienage in time of war, or from marriage, or from infancy.

All persons are infants, in law, until the age of twenty-one. But in Vermont, Maryland, Ohio, Maine, Missouri, Texas, and perhaps one or two other States, women are considered of full age at eighteen, for some purposes.

The rule of law is, that a person becomes of age at the beginning of the day before his twenty-first birthday. This rule opposes the common notion, and it rests on no very good reason, but on ancient authority and constant repetition. The reason assigned is, that the law takes no notice of parts of a day. The effect of the rule is, that a person born on the 9th of May, in the year 1840, becomes of age at the beginning of the 8th of May, 1861, and may sign a note, or do any thing, with the full power of a person of age, on any hour of that day.

The contract of an infant (if not for necessities) is voidable, but not void. That is, he may disavow it, and so annul it, either before his majority, or within a reasonable time after it. As he may avoid it, so he may ratify and confirm it. He may do this by word only. But mere acknowledgment that the debt exists is not enough. It must be *substantially*, if not *in form*, a new promise. In England, and in a few of our States, it is provided by statute that this confirmation can only be by a new promise in writing, signed by the promisor. This rule seems to be useful, and we think it will be more widely adopted.

It must be a promise by the party, after full age, to pay the debt; or such a recognition of the debt as may fairly be understood by the creditor as expressive of the intention to pay it; for this would be a promise by implication. There are no particular words or phrases which the law requires or favors as a confirmation. No

ratification or confirmation can be used in any action which action was brought before the ratification was made. It must also be made voluntarily, and with the purpose of assuming a liability from which he knows that the law has discharged him. And if it be a conditional promise, the party who would enforce it must prove the condition to be fulfilled. Thus, if the plaintiff relies on a new promise, and asserts and proves that the defendant said, after full age, "I will pay when I am able," he must also prove that the defendant was able to pay when the action was brought.

**If an infant's contract is not avoided, it remains in force.** And it may be confirmed without words; and the question sometimes occurs, whether confirmation by mere silence, after a person arrives at full age, prevents him from avoiding his contract made during his infancy. As a general rule, mere silence, or the absence of disaffirmance, is not a confirmation; because it is time enough to disaffirm the contract when its enforcement is sought.

**But if an infant buys property, any unequivocal act of ownership after majority** — as selling it, for example — is a confirmation of the purchase. And, generally, a silent continued possession and use of the thing obtained by the contract is evidence of a confirmation; therefore, if an infant buys a horse, and gives his note for it, and after he is of age the seller puts the note in suit, the buyer may return the horse and refuse to pay the note; but if he keeps the horse, this is considered evidence of a confirmation of the note. The evidence of confirmation is much stronger if there be a refusal to redeliver the thing when it can be redelivered; and is generally conclusive when the conduct of the party must either be construed as a confirmation, or, if not so construed, must be regarded as fraudulent or wrongful. Thus, where an infant purchased a potash-kettle, and gave his promissory note for the price, it being agreed by the parties that he might try the kettle, and return it if it did not suit him; and the vendor, after the infant became of age, requested him to return the kettle if he did not intend to keep it; but he retained and used it a month or two afterwards. The court held that this was a sufficient ratification of the contract, and that an action might be sustained on the note.

**The great exception to the rule that an infant's contracts are voidable, is when the promise or contract is for necessities.** The rule itself is for the benefit and protection of the infant, and the same reason causes the exception; for it cannot be for the benefit of the infant or minor that he should be unable to purchase food, raiment, and shelter, on a credit, if he has no funds. The same reason, however, enlarges this exception, until it covers not only strict necessities, or those without which the infant might perish, or

would certainly be uncomfortable, but all those things which are certainly appropriate to his person, station, and means.

There is no exact dividing line which could make this definition precise. But it is settled that mercantile contracts, as of partnership, purchase and sale of merchandise, promissory notes and bills, are not necessities, and that all such contracts are voidable by the infant. So, if he gives his note even for necessities, he is not bound by it; but may defend against it on the ground that it was for more than their true value; and the jury will be instructed to give against him only a verdict for so much as the necessities were worth.

If he borrows money, to be expended in the purchase of necessities, and gives his note, the debt, or the note, has been held, at law, voidable by the infant. But our courts would now hold an infant liable for such a debt; and it is well settled that an infant is liable for money paid at his request for necessities for him; and if he give a note for necessities with a surety who pays it, the surety may recover against the infant.

If an infant avoid a contract, he can take no benefit from it; thus, if he contracts to sell, and refuses to deliver, he cannot demand the price; or if he contracts to buy, and refuses the price, he cannot demand the thing sold.

An infant is as liable for torts (by torts or tortious acts the law means *wrongs*, or offences) as an adult; and, therefore, if he fraudulently represented himself as of age, when he was not, and so made a contract which he afterwards sought to avoid, this fraud will not prevent his avoiding the contract, but for damages caused by the fraud itself he is answerable just as an adult would be; and these damages might be measured by the contract. So if he disaffirms a sale, for which he has received the money, he must return the money; because keeping it would be a *wrong*, or else a confirmation of the sale. So if after his majority he destroys or puts out of his hands a thing bought while an infant, he cannot now demand his money back, as he might have done on tendering the thing bought; for by his disposal of it he has acted as owner, and confirmed the sale.

In general, if an infant avoids a contract on which he has advanced money, and it appears that he has received from the other party an adequate consideration for the money so advanced, which he cannot or will not restore, he cannot recover back the money which he advanced. But if an infant has engaged to labor for a certain period, and, after some part of the work is performed, rescinds the contract and ceases to do the work, he can recover for the work he has done, as much as that work was worth.

The contract of an infant is voidable only by him, or by those having a right to act for him, and not by the other party. The election to avoid or confirm belongs to the infant alone; and his having this right does not affect the obligation of the other party. Therefore, one who gives a note to an infant, or makes any other mercantile contract with him, must abide by it, unless the infant annuls it, which he can do if he chooses to.

But if the note were given or the contract made by a fraud on the part of the infant, the injured party has the same right of defending against it on this ground as if the fraudulent party were not an infant. And it is a universal rule of law that no contract which is tainted with fraud is valid against an innocent party; therefore, a wilfully false representation of the infant that he has reached his majority would be a fraud, and would enable the party dealing with him to set the contract aside.

Although in most of our States the law does not require that the confirmation or new promise of an adult, of a promise which he may avoid because it was made by him when an infant, must be in writing, it would always and everywhere be better and safer to have this new promise in writing. It should be in substantially this form:

(10.)

I, Henry Thompson, having promised Nathan Green, to (*here describe the promise, whether by a note, or verbally, for goods bought, or the like, briefly, but so that there may be no mistake about it*), and at the time of making that promise I was a minor, within the age of twenty-one years, now, in consideration of said promise, I do hereby confirm and acknowledge the same, and promise a full performance and execution thereof.

HENRY THOMPSON.

It would often be easier, if both parties assented, simply to give a new note for the amount due. But it might, in some cases, be better that the new promise should tell the story of the old promise, for which it is given.

#### GUARDIAN AND WARD.

Guardians of all descriptions take the place of parents, and are always treated by courts as trustees; and in almost all cases they are required to give security for the faithful discharge of their duty, unless the guardian be appointed by will, and the testator has exercised the power given him by statute, of requiring that the guardian shall not be called upon to give bonds. But, even in this case, such testamentary provision is wholly personal;

and if the individual dies, refuses the appointment, or resigns it, or is removed from it, and a substitute is appointed by court, this substitute must give bonds.

**The guardian is held, in this country, to have only a naked authority, not coupled with an interest.** His possession of the property of his ward is not such as gives him a personal interest, being only for the purpose of agency. But for the benefit of his ward he has a very general power over it. He manages and disposes of the personal property at his own discretion, although it is safer for him to obtain the authority of the court for any important measure. He may lease the real estate, if appointed by will or by the court; he cannot, however, sell the real estate without leave of the proper court. Nor should he convert the personal estate into real, that is, should not buy real estate, without such leave.

**As trustee, a guardian is held to a strictly honest discharge of his duty, and cannot act in relation to the subject of his trust for his own personal benefit, in any contract whatever.** And if a benefit arises thereby, as in the settlement of a debt due from the ward, this benefit belongs wholly to the ward. And it has been held that if a guardian makes use of his own money to erect buildings on the land of his ward, without having an order of the court therefor, he cannot charge the same in account with his ward, or recover the amount from the ward. But we doubt whether a rule so severe would be applied, unless for special reasons. He must neither make nor suffer any waste of the inheritance, and is held very strictly to a careful management of all personal property. He is responsible not only for any misuse of the ward's money or stock, but for letting it lie idle; and if he does so, without sufficient cause, he must allow the ward interest, and sometimes compound interest, in his account.

**To secure the proper execution of his trust, he is not only liable to an action by the ward, after the guardianship terminates, but, during its existence, the ward may call him to account by his next friend, or by a guardian appointed by the court for the action.** The courts have gone so far as to set aside transactions which took place soon after the ward came of age, and which were beneficial only to the former guardian, on the presumption that undue influence was used, and on the ground of public utility and policy.

**A guardian cannot, by his own contract, bind the person or estate of his ward; but if he promise, on a sufficient consideration, to pay the debt of his ward, he is personally bound by his promise, although he expressly promises as guardian.** And it is a sufficient consideration if such promise discharge the debt of the ward. And a guardian who thus discharges the debt of his ward may lawfully

indemnify himself out of the ward's estate, or if he be discharged from his guardianship, he may have an action against the ward for money paid for his use. An action will not lie against a guardian on a contract made by the ward, but must be brought against the ward, and be defended by the guardian.

**The guardianship is a trust so strictly personal, or attached to the individual, that it cannot be transferred from him, either by his own assignment or devise, or by inheritance or succession.**

**A married woman cannot become a guardian without the consent of her husband; but with that she may. A single woman who is a guardian generally loses her guardianship by marriage; but she may be reappointed. In some States she loses it on her marriage, by statute; in others not.**

#### APPRENTICES.

**The contract of apprenticeship is generally in writing, and is also most frequently by deed (or writing under seal), and is to be construed and enforced as to all the parties, by the common principles of the law of contracts. Usually the apprentice, who is himself a minor, and his father or guardian with him, covenant that he shall serve his master faithfully during the term. And the master covenants that he will teach the apprentice his trade; but the instrument is not made invalid by the omission to specify any trade or profession as that to be taught. He also covenants to supply him with all necessities, and at the end of the term give him money or clothes. Slight informalities would not make the instrument void. Even if they are of sufficient magnitude to have this effect, the instrument will prescribe and measure the claim of each of the parties against the other, if they have lived under this instrument as master and servant. But the apprentice's consent will not be inferred from his mere signature, but must be expressed.**

**In case of sickness the master is bound to provide proper medicines and attendance. The master cannot transfer his trust, or his rights over the apprentice. He has no right to employ the apprentice in menial services not connected with the trade or business which he has agreed to teach him. And when he neglects to take due charge of the apprentice, the parent's or guardian's authority will revive.**

**The sickness of the apprentice, or his inability to learn or to serve, without his fault, does not discharge the master from his covenants, because he takes this liability on himself. Nor will such misconduct as would authorize a master to discharge a common servant liberate the master of an apprentice from his liability on**



his said master without his leave; but in all things, as a good and faithful apprentice, shall and will demean and behave himself to his said master, and all his, during the said term. And for and in consideration of the sum of \_\_\_\_\_ to him in hand paid, &c., the receipt, &c., the said R. J. doth covenant, promise, and agree to teach and instruct his said apprentice, or otherwise cause him to be well and sufficiently taught and instructed, in the said trade of a \_\_\_\_\_ after the best way and manner that he can; and shall and will also find and allow unto his said apprentice meat, drink, washing, lodging, and apparel, both linen and woollen, and all other necessities, in sickness and in health, meet and convenient for such an apprentice, during the term aforesaid; and, at the expiration of the said term, shall and will give to his said apprentice (over and above his then clothing) one new suit of apparel, viz., coat, waistcoat, and breeches; hat, shoes and stockings, and linen, fit and suitable for such an apprentice.

IN WITNESS WHEREOF, The said parties have interchangeably set their hands and seals hereunto. Dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

(Signatures.) (Seals.)

(Witnesses.)

(12.)

#### SHORTER INDENTURE OF APPRENTICESHIP.

THIS INDENTURE WITNESSETH, That \_\_\_\_\_ by and with the consent of \_\_\_\_\_ hath put himself, and by these presents doth voluntarily, and of his own free will and accord, put himself apprentice to \_\_\_\_\_ to learn the art, trade, and mystery of \_\_\_\_\_ and after the manner of an apprentice to serve the said \_\_\_\_\_ for and during, and to the full end and term of \_\_\_\_\_ next ensuing. During all which time the said apprentice doth covenant and promise that he will serve his master faithfully, keep his secrets, and obey his lawful commands; that he will do him no damage himself, nor see it done by others, without giving him notice thereof; that he will not waste his goods, nor lend them unlawfully; that he will not contract matrimony within the said term; that he will not play at cards, dice, or any other unlawful game, whereby his master may be injured; that he will neither buy nor sell, with his own goods or the goods of others, without license from his master; and that he will not absent himself day nor night from his master's service without his leave; nor haunt alehouses, taverns, or playhouses; but in all things behave himself as a faithful apprentice ought to do during the said term. And the said master on his part doth covenant and promise that he will use the utmost of his endeavors to teach, or cause to be taught or instructed, the said apprentice in the art, trade, or mystery of \_\_\_\_\_ and will procure and provide for him sufficient meat, drink, clothing, lodging, and washing, fitting for an apprentice, during the said term, and will give him quarters \_\_\_\_\_ schooling during said term.

And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves, each unto the other, firmly by these presents.



IN WITNESS WHEREOF, The said parties have interchangeably set their hands and seals hereunto. Dated the            day of            in the year of our Lord one thousand eight hundred and

Executed and delivered before

(Signatures.)    (Seals.)

(Witnesses.)

## SECTION II.

### HUSBAND AND WIFE.

By the original common law of this country, a married woman was wholly incapable of entering into mercantile contracts on her own account. By the fact of marriage, her husband became possessed of all her real estate during her life; and if a living child was born of the marriage, he had her real estate during his own life, if he survived her. This life-right in her real estate is called, in law, his *tenancy by the curtesy*. This life-right remains in force in most of the States.

All the personal property which she has in actual possession becomes by common law absolutely his, as entirely as if she had made a transfer of it to him. But by property in possession the law means only her goods and chattels, or things which can be handled, and which actually are in her hands, or under her direct and immediate control. If she have notes of hand, money due her, or shares in various stocks, these are not considered as things in possession, but as things in action.

"Things in possession" are those things which one has now in his hands, and "things in action" (called in law *choses in action*), those which are so called because he who owns them cannot get possession of them without an action, if other persons choose to resist him. All debts, and evidences of debt, as bonds, notes, and all shares in stocks, whether national or State, or of incorporated companies or other companies, are things in action. But bank-bills are usually regarded as money, and therefore as things in possession. The common law makes a wide difference between things in possession and things in action in many respects.

The common law of husband and wife as to things in action is this: the husband may, if he pleases, reduce them to his possession, and so make them absolutely his own. In general, he does this by any act which is distinctly an act of ownership; as if he demands and collects the debts due to her, or indorses her notes — which he can do in his own name — and sells them, or has the stock transferred to his own name, or, in general, makes any final and effectual disposition of these *things in action*; then they have become absolutely his own.

If, however, he does not reduce them to possession, and dies, and she survives him, her whole right and property in them revive at his death, without any interest whatever in his representatives. And even if he disposes of them by will, this is ineffectual, unless he had reduced them into his possession while he lived.

If, however, he survives her, he will be made, if he wishes it, her administrator, and then can collect all her *things in action*, and hold them or their proceeds as his own. And if she dies, and then he dies before he has collected these *things in action*, administration on his wife's effects will be granted to *his* next of kin, and not to *hers*; and when collected, they will belong to his estate.

On the other hand, the husband is liable, by the common law, with her, for all the debts for which his wife was liable when he married her. This is true whether they were then payable or did not mature until after the marriage; and whether he received any thing with her or not. If he does not pay them, and dies before the creditor has obtained a judgment against him, his estate is not liable, even if he had a fortune with her, and that fortune goes to his heirs or his creditors, and her creditors get nothing. So it is if the wife dies before the creditor recovers a judgment against the husband, and the husband then retains all her fortune. But her responsibility revives at his death, and she is liable as before marriage, even if she carried him a fortune, and all her fortune went, as above stated, to his representatives. But if she dies, leaving *things in action* not reduced by the husband to possession, and he reduces them to his possession as her administrator, he must apply them to the payment of her debts, and can hold for himself only what is left after such payment.

Such, we have said, is the common law of England and of this country. We have stated it because it is the origin and common foundation of the law everywhere. But it is not just or right; and there are few, perhaps none of our States, in which it remains unqualified by statutory provisions. But these provisions are very various, and in some of the States they change with almost every year.

In nearly all the States a married woman conveys her own real estate, and releases dower by joining in a deed with her husband; but she is not generally bound by covenants therein, and, in many, must be separately examined. In most, she has a certain time after removal of the disability of coverture (marriage) to assert her different rights, which, if she does not assert them within that time will be barred. (See chapter on Statutes of Limitation.) Generally, devises or conveyances to husband and wife create a joint tenancy, unless the terms of the devise or conveyance are expressly

otherwise. And upon the marriage of a woman who is plaintiff or defendant, the suit does not abate, but the husband may be admitted to prosecute or defend with her.

I give here an abstract of the law of husband and wife, as it stands on the statutes of the several States. This abstract includes the homestead provisions. It should be added, however, that the law on these topics can hardly be considered as settled, and changes are frequently made.

#### ALABAMA.

In this State, the wife's separate estate is alone liable for her antenuptial debts, and the husband is not liable. Rev. Code, 1867, § 2370. All her property held before, or acquired after, marriage is secured to her separate use. Id. § 2372. The husband is her trustee, but not liable to account for the profits. Id. § 2372. She need not be of full age to release dower. Id. § 1628. The proceeds of a sale of her property are her separate estate, which the husband may use as most beneficial for her. They cannot contract with each other for the sale of any property. Id. § 2374. He may receive property coming to her. Her estate is liable for necessities for the family. If a suit therefor is brought against a husband, and execution is not satisfied, her separate estate may be sold by order of court. She may dispose of her property by will. Id. §§ 2376-2378. If the husband is unfit to manage her estate (or his estate, or abandons her, or has no property exempt from execution), she may be vested with the powers of a *feme sole*. Id. § 2384. \$1,200 worth of real estate, including the homestead, and \$1,000 worth of personal estate, are exempted from execution. Id. § 2884.

#### ARKANSAS.

In this State, a *feme covert* may be seised in her own right of any property not coming from her husband. Dig. of Ark. Stat. 1858, c. 111, § 1; Id. c. 68, § 25. Such property is not liable for the debts of the husband contracted before marriage. The homestead of one hundred and sixty acres of land, or a town or city lot, of the husband while living, and while occupied by widow or child of deceased husband, and certain specified personal property, are exempt from execution. Id. c. 68, §§ 29, 30. A married woman cannot be executrix. Id. c. 4, § 4. A married woman cannot make a will unless empowered by a marriage settlement, or by her husband. Id. c. 180, § 3. The private property of no married woman is exempt from the payment of debts contracted by her husband previously to the filing of a schedule of such separate property in the office of the recorder of the county where she lives. Id. c. 111, § 7.

#### CALIFORNIA.

In this State, all property owned before marriage, or subsequently acquired by gift, bequest, devise, or descent, by either party, is the sepa-

rate property of each: but all otherwise acquired by either after marriage is common property. An inventory of the wife's separate property, acknowledged or proved, as for a conveyance of land, must be recorded; and this shall be notice of the wife's title; and her property included therein is exempt from seizure on execution for the debts of her husband. He has the management and control of her separate property during marriage; but no alienation can be made, nor lien nor encumbrance created, unless she joins in the deed, and acknowledges upon a separate examination. But when she sells her separate property for his benefit, or he uses the proceeds with her written consent, it is deemed a gift; and neither she nor those claiming under her can recover. In certain cases, a trustee may be appointed to manage her property. The husband has the entire control and management of the common property, with like absolute power of disposition as of his own separate property; and the rents and profits of the separate property of both are deemed common property, unless with respect to the wife, the terms of the bequest, devise, or gift, are otherwise. Dower and curtesy are abolished. Upon the death of either party, one-half the common property goes to the survivor, and the other half to the descendants of the deceased, subject to the payment of his or her debts; if there are no descendants, the whole to the survivor, subject to such payment. Upon divorce, the common property is equally divided. The separate property of the wife is alone liable for her antenuptial debts. But the parties may control these provisions by marriage contract, which must be in writing, and recorded, or otherwise shall not affect third parties. It may be entered into by a minor, but cannot alter the legal order of descent, nor derogate from the husband's rights over the persons of his wife and children as head of the family, or the survivor's rights as guardian of the children. Compiled Laws of Cal. 1850-53, c. 147, p. 812. When a married woman is party to a suit, her husband is to be joined: except, if the action concerns her separate property, she may sue alone; and, if between herself and her husband, she may sue and be sued alone. If both are sued together, she may defend in her own right. *Id.* c. 123, §§ 7, 8, p. 520. There is also a homestead law, exempting the homestead to the amount of \$5,000 from final process of court; and it cannot be alienated without the wife joins in the conveyance, and acknowledges apart from her husband. Its other provisions are substantially similar to those before referred to. *Id.* c. 158, p. 850. The wife's real estate may be conveyed by separate deed, if her husband has been absent one year. Laws of 1855, c. 17. By complying with certain requirements, she may carry on, in her own name, any business, trade, profession, or art; and the property, &c., invested belongs exclusively to her; and she has all the legal privileges and disabilities of debtor and creditor, and becomes responsible for the maintenance of her children. Her husband is not liable for her debts thus contracted without special written promise; and she shall not originally invest more than \$5,000, without taking oath that the amount above that sum did not proceed from him. *Id.* c. 178, p. 881. She may cause the life of her husband to be insured for her benefit. Public Laws of 1854, c. 40. The personal property of the wife can be sold or transferred only when husband and wife join in the sale or transfer, except-

ing only what she holds as a *feme sole*. Laws of 1862, c. 394. She may dispose of her separate property by will, in like manner as any other person. Laws of 1866, c. 285. Her earnings are her separate property. If she lives separate from her husband, she may convey land by deed without his joining in the deed. Laws of 1870, c. 172.

#### CONNECTICUT.

In this State, the husband's interest in the wife's real estate cannot be taken for his debts, during her life or that of her child who is the issue of such marriage. General Statutes, 1866, p. 304. All real estate conveyed to her during marriage, paid for by money earned by her personal service, is hers to her sole use. And the proceeds of her real estate are hers, and not liable for his debts, where the price thereof is invested in her name or in a trustee for her use. Personal estate coming to the husband in the right of the wife, or through her as the meritorious cause, is held by him as trustee for her use; excepting so far as he has paid her debts contracted before marriage; and he may be required to give bonds as such trustee, or be removed and another appointed. Her receipt for money deposited by her in any bank, or savings-bank, or of money earned by her personal services, is valid. Policies of insurance on life for her benefit, if the premium does not exceed \$150, or is paid from her private property, are secured to her. All personal property coming to her during his abandonment of her, or their separation from his abuse or intemperance, is hers alone; and he thereby loses all control of all her property. Deed of sale of minor married woman's land, by order of Court of Probate, upon joint application, in writing, of herself and husband, will be good, as if she were of full age; the proceeds of such being held subject to the direction of the court. He may receive, she being a minor, her personal estate, upon filing an application in the Probate Court where the will was proved, and after proof of marriage and signing a bond for the safe-keeping of such estate; but no sale by him of his interest in her estate is valid without her consent, or after her death that of the guardian of her heirs, under age, in writing. During abandonment, she may transact business in her own name, and sue and be sued as a *feme sole*. Husband is not liable for wife's debts incurred before marriage, but is liable for debts incurred for support of wife and children since the vesting in him of her property. She may be sued for such debts as if unmarried. She may, with her husband (both being of lawful age), by joint deed convey her real estate; and if abandoned by him for three years, the Superior Court may give her leave to convey her real estate by her sole deed. All the personal property of a married woman, married since June 22, 1849, and all that is acquired by any married woman since that day, vests in her husband in trust for her; deducting only what he has paid for her antenuptial debts. Revised Statutes, Act concerning the domestic relations, c. 2, pp. 302-305. If a married woman becomes incapable of conveying her property, the Court of Probate may give power to her husband, or other meet person, to make such conveyance. Laws of 1867, c. 19. When any married woman carries on business, and incurs a debt therein, or makes a note or other instrument,

for the benefit of her sole estate, she may be sued therefor, and her property taken and sold on execution, as if unmarried. Laws of 1869, c. 124. If a married woman, residing out of the State, becomes incapable of managing her affairs, a conservator of her estate may be appointed by the Court of Probate. Laws of 1870, p. 369.

## DELAWARE.

In this State, the widow of one who made his will before marriage takes the same share as if he died intestate. R. S. c. 84, § 23. Insurance on life for her benefit is secured to her, if the premium do not exceed \$150. Id. c. 76, § 3. If her husband abandon her, the court may provide for the support of herself and her children out of his property. Id. c. 48, § 15. She cannot make a power of attorney. Id. c. 83, § 13. Real estate, mortgages, stocks, and silver plate belonging to her at marriage, or acquired during coverture, are not subject to his disposition, or liable for his debts, except judgments recovered against him for her liabilities before marriage; but she may not dispose of such property nor create any encumbrance on her real estate, nor dispose of the rents thereof, nor of the interest of her stock and mortgages, without his consent in writing under seal. This provision does not affect him as tenant by curtesy; but with his consent, as aforesaid, the proceeds of such sale as above authorized may be invested in her own name as her sole property, subject to the laws governing the principal. Laws of Delaware, 1865, c. 572, §§ 1, 2, 3.

## FLORIDA.

In this State, the husband or wife administers in preference to others. Thompson, Dig. 2 Div. tit. 3, c. 2, § 1, ¶ 5. Their rights, by marriage, under the Spanish law when in force, are preserved. Id. 2 Div. tit. 3, c. 1, § 4; 2 Div. tit. 3, c. 1, § 2, ¶ 1. The wife retains, independent of her husband, and is not liable for his debts (if inventoried and recorded; but failure to record confers no right upon him: id. 2 Div. tit. 5, c. 1, § 2, ¶ 8), all property owned before or obtained after marriage; but he has the management of it. She cannot sue him for rent, nor can he sue her for management. Her property alone is liable for her antenuptial debts; and, upon her death, he takes the same interest in her property as a child; but, if she leaves no child, the whole. Id. 2 Div. tit. 5, c. 1, § 2. A homestead of forty acres, if ten of it be cultivated, is exempted from execution. Id. 3 Div. tit. 5, c. 8, § 3; Laws of Florida, 1869. "*Every person* of the age of twenty-one years," of sound mind, may make a will. Id. 2 Div. tit. 3, c. 1, § 1, ¶ 1. Certain provisions of the criminal code are extended to married women. Laws, 1868, c. 4, § 6.

## GEORGIA.

In this State, marriage settlements, if not recorded within three months after execution, are invalid as to *bona fide* purchasers, creditors, or sureties without actual notice, becoming so before actual recording. Code, ed. of

1867, p. 354. The husband takes administration, and is sole heir of his deceased intestate wife. *Id.* p. 351. On the death of the husband without issue, the wife is the sole heir. *Id.* p. 351. The wife of an idiot or lunatic is generally entitled to the guardianship. *Id.* p. 370. If deserted, her earnings vest in herself. *Id.* p. 351. By an act, approved February 28, 1856, Laws of 1855-56, tit. 19, No. 176, p. 229, a husband married thereafter is not liable for his wife's debts, further than the property received through her will satisfy; and such property is not liable for his debts existing at the time of the marriage. A married woman may deposit in any savings institution any sum not more than \$2,000, the earnings of herself or children, as her own separate property, as if she were unmarried. Laws of Georgia, 1865-66, tit. 26, §§ 1, 2. All her property, whether belonging to her at marriage, or acquired during coverture, vests in her, and is not liable for any debt, default, or contract of her husband. *Id.* p. 350.

#### ILLINOIS.

In this State, there is a homestead law, similar in its purposes to those before mentioned, exempting the homestead to the value of \$1,000. It continues after the death of the householder, for the benefit of the widow and family, if one of them occupies the same, until the youngest child is twenty-one years of age, and the death of the widow. Gross, Statutes, 1869, p. 327. An act was passed in March, 1874, entitled, "An act to revise the law in relation to husband and wife." It provides, substantially, as follows: A married woman may, in all cases, sue and be sued without joining her husband with her, to the same extent as if she were unmarried. If husband and wife are sued together, the wife may defend for her own right; and if either neglect to defend, the other may defend for such one also. When the husband has deserted his family, the wife may prosecute or defend, in his name, any action which he might have prosecuted or defended; and the same right shall apply to the husband upon the desertion of the wife. For all civil injuries committed by a married woman, damages may be recovered from her alone; and her husband shall not be responsible therefor, except in cases where he would be jointly responsible with her, if the marriage did not exist. Neither husband nor wife shall be liable for the debts or liabilities of the other incurred before marriage; nor be liable for the separate debts of each other; nor shall the wages, earnings, or property of either, nor the rent or income of such property, be liable for the separate debts of the other. Contracts may be made and liabilities incurred by a wife, and the same enforced against her, to the same extent and in the same manner as if she were unmarried; but, except with the consent of her husband, she may not enter into or carry on any partnership business, unless her husband has abandoned or deserted her, or is idiotic or insane, or is confined in the penitentiary. A married woman may receive, use, and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors. Neither husband nor wife shall be entitled to recover any compensation for any labor performed or services rendered for the other, whether in the management of property or otherwise. A married woman may own, in her

own right, real and personal property obtained by descent, gift, or purchase, and manage, sell, and convey the same to the same extent and in the same manner that the husband can property belonging to him. In case the husband or wife abandons the other and leaves the State, and is absent therefrom for one year, without providing for the maintenance and support of his or her family, or is imprisoned in the penitentiary, any court of record in the county where the husband or wife so abandoned or not confined resides, may, on application by petition, setting forth fully the facts, if the court is satisfied of the necessity by the evidence, authorize him or her to manage, control, sell, and incumber the property of the other, as shall be necessary, in the judgment of the court, for the support and maintenance of the family, and for the purpose of paying debts of the other, or debts contracted for the support of the family. A husband or wife may constitute the other his or her attorney in fact, to control and dispose of his or her property for their mutual benefit or otherwise, and may revoke the same to the same extent and in the same manner as other persons. The expenses of the family and of the education of the children shall be chargeable upon the property of both husband and wife, or of either of them, in favor of creditors therefor, and in relation thereto they may be sued jointly or separately. Neither the husband nor wife can remove the other or their children from their homestead without the consent of the other, unless the owner of the property shall, in good faith, provide another homestead suitable to the condition in life of the family; and if he abandons her, she is entitled to the custody of their minor children, unless a court of competent jurisdiction, upon application for that purpose, shall otherwise direct. When the husband or wife is insane, and therefore incapable of executing a deed or mortgage, and conveying his or her right to curtesy, dower, or homestead in the real property of the other, the same person may present his or her petition to any court having general chancery jurisdiction over the real estate to be affected, setting forth the facts, and praying for an order authorizing the applicant, or some other person, to execute a deed of conveyance or mortgage for such insane person, and thereby relinquish his or her right of curtesy, dower, or homestead in said real estate. In granting the petition there must be due protection of the rights and property of the insane husband or wife, and of those who deal with him or her. By another act, tenancy by the curtesy is abolished, and husband and wife are put on the same footing as to dower.

## INDIANA.

In this State, the husband is liable for her antenuptial debts only to the extent of the personal property he received with her, or from the sale or rent of her lands. *Gavin & Hord's Statutes of Indiana, 1862, vol. i. p. 373.* And such liability is not extinguished by her death. *Id.* § 2. Her Christian name is sufficient in a suit against them jointly. *Cox v. Runnion, 5 Blackf. 176.* Her admissions subsequent to marriage are not admissible in a suit against them jointly for a debt of hers while single. *Brown v. Lasselle, 6 Blackf. 157; Lasselle v. Brown, 8 id. 221.* Process need only be served on the husband when subsequent proceedings are against both. *Campbell v. Baldwin, 6 id. 364; King v. McCampbell, id.*



435. The husband is a proper party to a *scire facias*, on a judge's transcript of judgment against the wife while single. *Campbell v. Baldwin, supra*. The plaintiff must prove marriage in assumpsit against both on a note of wife before marriage, when non-assumpsit is pleaded. *Wallace v. Jones*, 7 id. 321. They should sue separately in an action for libel upon both. *Hart v. Crow*, id. 351. As to the wife's agency, see *Casteel v. Casteel*, 8 id. 240. Judgment against them jointly for tort of wife must be satisfied first from her lands, if she have any. Id. p. 374. Her lands are not liable for her husband's debts, but remain her separate property; but she cannot encumber or convey them except by deed, in which her husband must join. Id. p. 374. *Barnett v. Goings*, 8 Blackf. 284. Suits relative thereto should be in the name of both; if separated, in her name, in which case the husband is not liable for costs. Id. p. 375. The wife cannot sue, or defend by guardian or next friend, unless under twenty-one. Id. p. 371. There are special provisions as to powers of a wife, if abandoned by her husband. Id. p. 375. If a husband die, testate or intestate, one-third of his real estate goes to his wife in fee-simple, free from all demands of creditors; but if the real estate exceeds in value \$10,000, she takes, as against creditors, only one-fourth; and if it exceeds \$20,000, only one-fifth. Id. p. 294. If she die, one-third of her real estate goes to him. Id. 295. If a husband or wife die intestate and without a child, the whole estate goes to the survivor. Id. p. 290. \$300 in value of real or personal property, or both, at the election of the debtor, is exempt from execution. Id.; *Gavin & Hord's Statutes*, vol. ii. p. 363.

## IOWA.

In this State, the personal property of the wife does not vest at once in the husband, but, if left under his control, will, in favor of third persons acting in good faith and without knowledge of the real ownership, be presumed to have been transferred to him. But she may avoid such surrender by filing for record a notice stating the amount of such property, and that she has a claim therefor; and if, during her lifetime, he dies or becomes insolvent, she is deemed a preferred creditor to that amount, without interest, but not as to creditors without knowledge, who become such after the property is placed under the husband's control, and before the filing of such notice. The wife must prove the amount of such property; but after five years the notice is presumptive evidence. Property which ordinarily passes only by written evidence of transfer is presumed, without notice, to belong to the wife, unless she received it from the husband. He is not liable upon contracts relative to her separate property or purporting to bind herself alone, nor is her property or income liable for his debts. Family expenses, education of children, &c., are chargeable upon the property of both or either; they may be sued jointly, or the husband separately. When abandoned by her husband, the wife may obtain permission to act as if *sole*, and to dispose of a portion of his property, and collect debts due him; and the husband, in like case, may obtain similar power over her property. *Rev. St. of 1860*, pp. 425, 426. He cannot remove the wife or children from the homestead without their

consent. Id. 427. The estate by the curtesy is abolished, and the husband is entitled to the same rights of dower as the wife. Id. p. 420. When judgment is against husband and wife, execution may issue against the property of either or both. Id. p. 600. If both are sued jointly, the wife may defend for her own right, or for her husband's right also. Id. p. 491. A married woman may receive gifts or grants from her husband without the intervention of a trustee. Id. p. 388. There is also a homestead exemption law, to the extent of a town plat of half an acre; or, if not within a town, of forty acres, or enough more to make a value of \$500. Id. p. 403.

## KANSAS.

In this State, the property, real or personal, of a married woman, owned at the time of her marriage or subsequently received, is her sole and separate property, not subject to the disposal of her husband, nor liable for his debts. Gen. St. 1863, p. 562. She may sell and convey, or enter into any contract relating thereunto, and may sue and be sued as if sole. Id. p. 563. She cannot bequeath more than half of her property away from her husband, without his written consent. Id. p. 1113. If either die intestate and without issue, all his or her property goes to the survivor. Id. pp. 394, 395. If a husband deprives his wife by will of more than half his property, she may elect to accept the conditions of his will, or take half of his property. Id. p. 1113. Dower and curtesy are abolished. Id. A homestead of one hundred and sixty acres of land, or one acre in a city, town, or village, is exempted from sale by execution. Id. p. 473.

## KENTUCKY.

In this State, the husband has no interest in the real estate or chattels of the wife, except the use of them, with power to let out to rent real estate for three years at a time. R. S. of Kentucky, c. 47, art. 2, § 1. Such estate is only liable for her antenuptial debts, and for necessities for the family, the husband included. Id. Her chattels real may be conveyed in the same way as land, and the proceeds go to the husband, unless otherwise provided. Id. § 2. He is not liable for her antenuptial debts except to the amount received by her independent of real estate or slaves. Id. § 3. Provision exists for a married woman's acting as *feme sole* in case of abandonment, imprisonment of husband, &c. Id. § 4. The wife of a non-resident husband may act as a *feme sole*. Id. § 8. An alien wife of a citizen husband may inherit property, c. 15, art. 3, § 3. The deeds of a *feme covert* may be either joint or separate, c. 24, § 21; and must be separately acknowledged. Id. § 22. For various provisions relating to dower, see c. 30. Marriage agreements must be recorded, c. 24, § 9. The husband's remedy against the wife's tenant is the same after her death as before, c. 56, art. 2, § 25. She has the general rights of an unmarried woman in regard to stock held for her exclusive use. Id. § 16. Real or personal estate conveyed or devised to her, except as a gift, cannot be aliened without the consent of her husband. Id. § 17. Provision exists for the sale of married women's property, c. 86, art. 1, 5, 6. A married woman may dis-

pose of her separate property by will, or execute a power, c. 106, § 4. Wills are revoked by a subsequent marriage, except when made under power of appointment, when the estate would not, in default of such appointment, go to the heirs. Id. § 9. She may deposit in bank and check as if sole; but rights of third parties are not affected if bank has notice. Supplement 1886, p. 727. When there is no appearance of fraud, on joint application of husband and wife, the court may empower her to use, sell, and convey, for her own benefit; any property she may own or acquire; and to trade in her own name as a *feme sole*, and dispose of her property by deed or by will; and in all cases it is free from the debts of her husband and liable for her own. Id. p. 728.

## LOUISIANA.

In this State, the wife cannot appear in court without the authority of her husband, though she may be a public merchant, or hold her property separate from him. Even then, she cannot alienate, mortgage, or acquire by gratuitous or unencumbered title, without his written consent. She may be authorized by the judge of probate upon his refusal; and if separated from bed and board, has no need of the authorization of her husband. If a public merchant, she may, without being empowered by him, obligate herself in any thing relating to her trade; her husband is also bound, if there is a community of property. She is considered a public merchant if she carries on a separate trade, but not if she retails only the merchandise of the commerce carried on by him. If the husband is under interdiction, or absent, the judge may authorize her to act as if unmarried. She may make a will without his authority. Civil Code, art. 121-132, 1239, 1467, 1779. But she cannot become an executrix without his consent or the court's. Id. art. 1757. She may act as a mandatary. Id. art. 1780. Neither party can be a witness for or against the other. Id. art. 2260. They may, by marriage contract, determine the rights of property; but cannot change the legal order of descents (this restriction not affecting donations *inter vivos* or *mortis causa*, or donation by the marriage contract according to the rules for donations *inter vivos* or *mortis causa*), nor derogate from the husband's rights over the person of his wife and children, or as head of the family, nor with respect to children; if he survive the wife, nor from the prohibitory dispensations of the Code. Id. art. 2305-2307, 2316. The property of married persons is divided into "separate" and "common;" and the separate property of the wife into "dotal" and "extra-dotal" or "paraphernal." The "dotal" is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Id. art. 2314, 2315, 2317. Full provisions exist as to the settlement, administration, recovery, subject-matter, &c., of dowry, and the rights of both parties therein, effect of insolvency of the husband, marital portion, &c., id. art. 2317-2354, 2358, 2359; as to the administration, fruits, &c., of the extra-dotal effects. Id. art. 2360-2368. The wife has a legal mortgage on her husband's immovables (which he may release by giving a special mortgage to the satisfaction of a family meeting, &c., or in accordance with stipulations in the marriage contract); but it shall

not be lawful to stipulate that no mortgage shall exist, id. art. 2357; R. S. 1856, p. 242, tit. Husband and Wife; and a privilege on his immovables for the restitution of her dowry, &c. Id. art. 2355-2357, 2367, 3182, 3187. This is in lieu of dower, id. art. 3219; and is seventh in the order of preference. Id. art. 3221. A partnership or community of acquets or gains exists by operation of law in all cases. But the parties may modify or limit it, or agree that it shall not exist; in which case there are provisions, preserving to the wife the administration and enjoyment of her property and the power of alienating it as if paraphernal, with reference to the expenses of the marriage and liability of the husband. Id. art. 2312, 2369, 2370, 2393-2398. This community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact; of the produce of the reciprocal industry and labor of both husband and wife; and of the estates which they may acquire during marriage, either by donations made jointly to them both, or by purchase, or in any similar way, even though the purchase be in the name of one and not of both. Debts contracted during marriage enter into this partnership, and must be acquitted out of the common fund; but those contracted before marriage, out of individual effects. The husband is the head and master of the community; administers its effects, disposes of the revenue, and may alienate by an unencumbered title, without the wife's consent. Id. art. 2371-2373. There are special provisions as to conveyances and dispositions of the community property and gains; effect of dissolution of marriage; ability of the wife to exonerate herself from debts contracted during marriage by renouncing the partnership; effect of such renunciation; death; survivorship; separation *a mensa et thoro*; separation of property during coverture; rights of creditors, &c., id. art. 2373-2392, 2398-2412; R. S. 1856, p. 242, tit. Husband and Wife; the absence of one party. Code, art. 65. Either party, by marriage contract or during marriage, may give to the other all he or she might give to a stranger. R. S. 1856, p. 79, § 17. Property acquired in the State by non-resident married persons, whether the title is in the name of either or in their joint names, is subject to the same provisions as if owned by citizens of the State. R. S. p. 103. If husband or wife die intestate, without ascendants or descendants, his or her share in the community property is held by the survivor in usufruct for life; if the deceased intestate leave issue of the marriage, the survivor holds such issue's inheritance in usufruct till death or second marriage. R. S. pp. 103, 104. A married woman, in certain cases, may be authorized to contract debts and give mortgages; or renounce her rights in favor of third persons; or appoint an agent. R. S. pp. 560, 561, tit. Woman.

## MAINE.

In this State, a married woman holds as her separate property whatever she possessed before marriage, and whatever comes to her after marriage, unless purchased by the husband's money or coming from him so as to defraud his creditors, Acts of 1855, c. 117; and has all the usual rights of a single woman as to it, R. S. c. 115, § 82; Acts of 1855, c. 120; but cannot convey property received through the husband or his relatives unless he

join. Acts of 1856, c. 250. Her property is alone liable for her debts before marriage. Acts of 1852, c. 291. Although under twenty-one years, she is of full age. Id. There are provisions as to a married woman being administratrix, or executrix, R. S. c. 106, § 35; guardian, R. S. c. 110, § 24; insane, id. c. 112, § 1; Acts of 1853, c. 6; whose husband is under guardianship, Acts of 1853, c. 33; and the homestead, to the value of \$500, is not liable for his debts, and goes to his widow and minor children. Acts of 1850, c. 207. Real estate may be conveyed to a wife by her husband as security for a *bona fide* debt, and this may be conveyed by her without his being joined in the deed. Acts and Resolves, 1863, c. 214. Letters of administration may be granted on her estate, and all debts contracted for her benefit shall be paid by her executor and allowed him. She may engage in trade on her own account, and any contract made by her is valid, and her property is liable to execution for her debts; his property is exempt in any such case, unless he were a party to the contract. Id. c. 77, 148; Acts of 1866, c. 52. A homestead not exceeding in value \$500 is exempted from execution. R. S. p. 502.

#### MARYLAND.

In this State, if a married infant unite with her husband in a conveyance to release dower, courts of equity may declare it valid if equitable. Dorsey, Laws of Md.; Public Acts of 1832, c. 302, § 7. She cannot be executrix or administratrix unless her husband give a bond. Id.; Public Acts of 1798, c. 101, Sub. c. 4, § 8. Her *choses in action*, at her death, become her husband's without his taking out letters of administration. Id.; Sub. c. 5, § 8. An alien wife of a citizen husband residing in the United States has her dower, and may hold lands by purchase and transfer the same as if a citizen. Id.; Public Acts of 1813, c. 100. Any devise or bequest to her is construed to be in bar of her dower, unless otherwise expressed. Id.; Public Acts of 1798, c. 101, Sub. c. 13, §§ 1, 3. Insurance on life is secured to her, if the premium do not exceed \$300. Public Acts of 1840, c. 212. Her receipt for money deposited before her marriage in any bank, is valid, if no creditor of the husband has previously attached it. Public Acts of 1853, c. 335. Married woman may make a will with consent of her husband subscribed if she have been examined apart; not to apply to property acquired after the adoption of this code. Code 1860, p. 686. Her property belonging to her at marriage or acquired during coverture is not liable for his debts, but she holds it for her separate use the same as if *sole*. She may convey by joining with her husband. Property passing from him to her after coverture if in fraud of creditors is void. If she die intestate leaving children, he has a life-estate in both real and personal property; but if she leave no children his life estate in her real and personal property vests in him absolutely. Code 1860, p. 325, §§ 1, 2, 7. It is not necessary for her to have a trustee to secure the separate use of her property, but she may make one by joining to a deed with her husband. When there is none she may sue by her next friend. Id. 325, § 14. She has dower in lands held by equitable title of her husband. If he be convicted of bigamy she is at once endowed of one-

third of his real estate, with like remedy for its recovery as in other cases, and to one-third of his personal estate as if he had died intestate. He in such case forfeits his title to curtesy, and his claim to any estate personal or mixed which he might have in her right. She, on such conviction, forfeits dower, and her share of the personal estate. *Id.* p. 207, § 11. If leases for a definite term or renewable for ever are made to her, the rent of which shall be unpaid for the space of ninety days, she may levy upon the holders of such lease by distress, or bring an action for the recovery of the premises. She may bind herself and assigns by covenants running with the land as if a *feme sole*. Laws of Md. 1867, p. 427, §§ 1, 2. She may release her right of dower in real estate, by joint or separate deed. *Id.* 327, § 11.

## MASSACHUSETTS.

In this State, provisions exist for the benefit of the wife when deserted by the husband (R. S. c. 77), to a great extent superseded by the Laws of 1855, c. 304, *post*. A married woman coming into the State, whose husband never lived with her in the State, has the same rights as a single woman in matters of contract and suit. R. S. c. 77, § 18; *Gregory v. Paul*, 15 Mass. 31; *Abbott v. Bayley*, 6 Pick. 89. Antenuptial contracts in favor of the wife are valid, and she may receive any conveyance (except from her husband), bequest, or devise to her own use, without a trustee, and has all the powers respecting it a trustee would have, and is liable for any contract made or wrong done before marriage. Laws of 1845, c. 208. A woman married after June 4, 1845, holds, as a single woman might, all property held before marriage or subsequently acquired, except by gift from her husband; but cannot convey real estate (except for a term not exceeding one year), nor shares in a corporation, without the written consent of her husband, or the consent of a judge of the Supreme Court, Court of Common Pleas, or Probate, nor bequeath away from her husband more than half her personal estate, without his consent in writing, and her property is alone liable for her antenuptial debts. Any married woman may dispose by will of her real estate, but cannot thereby deprive her husband of his tenancy by the curtesy; and her real estate and shares in a corporation are not liable for his debts contracted since June 4, 1855. And any married woman may be a sole trader. Laws of 1855, c. 304. There are also provisions as to guardianship, R. S. c. 77, 79, and insanity. Laws of 1855, c. 233; 1856, c. 99, 169. A homestead to the value of \$500 is not liable for the debts of a householder, but after his death is for the benefit of his widow and family, for her life and while any child is a minor, provided it be designated in the deed of purchase as a homestead under this act, or if already purchased, be so declared in a deed acknowledged and recorded, and is safe only from debts contracted after the record, and is not exempt from taxes, debts incurred by purchase, and debts for ground-rent of land upon which it is situated. This exemption shall not defeat any lien or encumbrance existing when the law was passed. A husband cannot convey such homestead without his wife joins in the deed. Laws of 1851, c. 340. If a man dies testate, leaving a widow, she may, at any time within six months after probate of the will, file in the probate office her waiver of

the provisions made for her in the will; and shall be thereupon entitled to such portions of his real and personal estate as she would have been entitled to if her husband had died intestate. But she takes only for life her share of the personal property over \$10,000. Acts and Res. 1861, c. 1. Married woman doing business on her own account must file a certificate in clerk's court, giving name of husband, nature and place of business; if she neglects, her husband may file one; and in case both neglect so to do, then the woman shall not be allowed to claim any property employed in the business, as against her husband's creditors; and he shall be liable on all contracts made in the prosecution of such business. Laws and Res. 1862, c. 198. By Act of 1863, id. c. 165, married women are prohibited from entering into copartnership in business with any person. Policies of insurance made payable to her or to any one in trust for her, whether by her husband or any other person, shall inure to her separate use, and that of her children, independently of her husband, the person assigning, or the creditors of either. But if the premium be paid with an intent to defraud creditors, an amount equal to such premium shall inure to the benefit of the creditors, subject to Statute of Limitations. Id. 1864, c. 197. Any accumulation of income of an estate held in trust for her, in the hands of trustees, or which has been received by her and invested together with the accumulations thereof, may be disposed of by her during her lifetime, or by will or appointment to take effect after her death, and with her written consent trustees may hold or invest such income on the same trusts as the principal estate is held. She may be a witness when contract was made by her in the absence of her husband. Supplement to Gen. Stats. p. 270; Id. 407. Her earnings not held by trustee process for his debt. Laws of 1868, c. 95. She may be, with the consent of her husband, executrix, administratrix, guardian, or trustee, and act therein, and hold and be held as if unmarried. Laws of 1869, c. 409.

#### MICHIGAN.

In this State, if a husband abandons his wife, or is in the State prison, she may be authorized, if of age, to act and be liable, in general, as a *feme sole*, in which case her contracts bind both as if their marriage had subsequently taken place. She may join with her guardian to release dower, and any agreement between her and such guardian is binding. The same rules apply to a married woman who comes into the State without her husband. The property acquired by a married woman, before or after coverture, is free from her husband's liabilities; but she cannot sell it without his consent, or authority from court, nor if separated from him can she remove it from his premises without such authority. R. S. c. 85. She may recover land lost by his default, and defend when he neglects. Id. c. 113, §§ 3, 4. The marriage of an executrix extinguishes her authority. Id. c. 69, § 8. So of an administratrix. Id. c. 70, § 13. A *feme covert* may have a general and beneficial power to dispose, during marriage, of lands conveyed to her. Id. c. 64, § 8. She may devise her property, id. c. 68, § 1; and may have dower through an alien. Id. c. 66, § 21. A married woman may insure the life of her husband for her benefit

and that of her children, but the annual premium must not exceed \$300. Laws of 1848, No. 233, p. 350. When a divorce from bed and board, she has the same power over the property as a *feme sole*. Compiled Laws, p. 965, § 24. When the divorce is not her fault, or on the imprisonment of her husband for life, she is entitled to her real estate, and a reasonable amount of the personal, which came to him by reason of the marriage. But when she is divorced for her adultery, he holds her real estate as long as they both live, and if there be children, he holds it as tenant by curtesy; and her personal estate for ever. Id. 956, §§ 18, 19, 25. A homestead of the value of \$1,500 is exempted from execution. Compiled Laws, c. 132; Laws of 1861, No. 248. She may sue and be sued, as to her sole property, as if unmarried. Laws of 1857, No. 132; id. No. 196.

## MINNESOTA.

In this State, all property owned by any married woman, real or personal, at her marriage, or received afterwards, is her own, as if unmarried, and is free from the control of her husband, and is not liable for his debts. She may make any contract she could make if unmarried; and any transfer of her property, except that the husband must join in the deed of her realty, unless he have deserted her. Neither husband nor wife is liable for the debts of the other, except that the husband is liable for necessities furnished to the wife, as at common law. Either may be the agent of the other, or contract with the other, except as to the sale of real estate from one to the other. A husband deserting his wife, or divorced, may be decreed by the District Court, on an action by the wife, to be debarred from his curtesy, and the wife may be permitted to act with reference to her real property as if sole. Laws of 1869, c. 56. A homestead of eighty acres not included in any incorporated town, city, or village, or one lot in any town, city, or village, is exempt from sale by execution. Rev. St. 1866, c. 68.

## MISSISSIPPI.

In this State, the rents, issues, and profits of her real estate inure to her sole and separate use. Revised Code, 1857, p. 336. Suits affecting her separate property may be prosecuted and defended in their joint names. Id. p. 336. Covenants in consideration of marriage and marriage settlement must be acknowledged and recorded. Id. p. 310. She may defend in a suit for her land if the husband neglects. Id. p. 316. The husband is not liable for the wife's antenuptial debts, nor for any debt contracted after marriage, if she hold separate property. Id. 336. Wife may convey her real estate by joint deed, and is bound by her covenants in such deed. Revised Code, p. 307, art. 4. Every description of property of a married woman and the income of such is her own separate property, and is not liable for his debts, nor can it be encumbered in any way but by joint deed. Id. 385, art. 23. He is entitled to curtesy in her real estate, and if she leave no children, inherits her personal property. Id. 337, art. 28. She may dissent from his will if her separate property be not equal to what would be her dower and distributive share in her husband's estate.



Id. 338, art. 31, 32. Her separate receipt is good, and her bond executed jointly with her husband binds her separate property. Id. 337, art. 30. A homestead is exempted from execution, not more than one hundred and sixty acres, and not more in value than \$1,500. Id. 529.

#### MISSOURI.

In this State, a married woman may not be executrix or administratrix. General Statutes (1865), p. 480. Marriage contracts must be recorded. Id. 460. The rents and issues of her real estate, owned at marriage or afterwards acquired, are not liable for the debts of her husband, nor is his interest in her real estate, excepting that the annual products may be levied upon for a debt of the husband created for necessities for the wife and family, or for the cultivation or improvement of her real estate. Id. p. 464. She may devise her real estate, but not so as to affect his curtesy. Id. A homestead is exempt from execution, not more than one hundred and sixty acres, and not exceeding \$1,500 in value. Id. p. 448. The wife may insure for her benefit either her husband's life or her own; and no life insurance effected, whether before or after marriage, by the husband upon his own life shall be liable for his debts, unless so expressed upon the face of the policy. But a creditor may insure his debtor's life. Id. p. 464. If husband without cause abandon his wife, or lawful children under twelve years of age, he is punished by fine of not less than \$50 nor more than \$500, or by imprisonment for not less than one month nor more than twelve months. Laws of Missouri, 1867, p. 112.

#### NEBRASKA.

In this State, any real estate belonging to a married woman may be managed or disposed of by lease, deed, or will, as if she were single. Rev. St. 1866, p. 290. She is not bound by any covenant in a joint deed of herself and husband. Id. p. 291. On dissolution of the marriage for any cause but her adultery, the court may order the whole or any part of the personal property which came to the husband by the marriage to be restored to her, or to trustees for her. Id. p. 131. A homestead not exceeding one hundred and sixty acres of unincorporated land, or not exceeding two lots in any town, city, or village, is exempted from sale by execution. Laws of 1867, p. 91.

#### NEVADA.

In this State, all property of the wife, real or personal, held at marriage, or afterwards acquired by gift, bequest, devise, or descent, is her separate property; and all the husband's so held or acquired is his separate property. All property acquired otherwise by either party, after marriage, is common property. An inventory of her property must be made and recorded. During marriage, the husband has the management and control of her separate property; but no alienation shall be valid unless by instrument executed by both. The separate personal property of the wife,

except money in specie, shall not be sold or transferred, unless husband and wife join therein. The District Court may assign a trustee to take care of the wife's separate property, if the husband mismanages the same. The husband has the same control and disposition of the common property as of his separate estate. Dower and curtesy are abolished. The separate property of the wife is liable for the antenuptial debts of the wife, but his is not. Marriage contracts, duly executed and recorded, may vary these rights and interests. Laws of 1865, c. 76. Married women may carry on and transact business under their own name, under certain regulations. Laws of 1867 c. 10. A homestead not exceeding in value \$5,000 is exempt from sale on execution. Laws of 1865, c. 72.

## NEW HAMPSHIRE.

In this State, a married woman holds free from interference of her husband all property owned before or acquired after marriage, if not occasioned by payment or pledge of his property. Gen. St. 1867, p. 337. She has the same rights and remedies as to the same as if unmarried. P. 338. After three months of desertion, or of any other thing which if longer continued will be a cause of divorce, the wife may hold in her several right, and dispose of property acquired by her in any way, and the earnings of the minor children, until the desertion ceases. And the judge of probate in the county where she resides may order provision for her and her children from any property of the husband in the State. She shall then have the same rights; and her property shall descend, as if single. Id. 337. The will of the married woman passes property held in her right to any devisee except the husband; but shall not affect his rights in the estate, or to a distributive share thereof. Id. 338. The homestead, to the value of \$500, is exempt from attachment and execution, and is in no way liable for the husband's debts, nor subject to distribution or devise, while a widow or a minor child lives thereon. But this right may be waived by deed of husband and wife, and is not valid against a claim or note or mortgage of husband and wife, or for labor less than \$100, or a lien by the seller of the estate for its price, or a debt contracted for the erection of the buildings, or for taxes. Laws of 1868, p. 130.

## NEW JERSEY.

In this State, her property, real or personal, acquired before or after marriage, is free from the husband's control or debts. Public Acts of 1852, p. 407. Antenuptial contracts are valid. Id. Any insurance of life for her benefit is secured to her or her children, if the premium does not exceed \$100. Public Acts of 1851, p. 34. If her husband dies, she may recover from his estate the personal property belonging to her before marriage. Public Acts of 1851, p. 201. If she dies, her husband may administer and retain her personal property. R. S. tit. 10, c. 7, § 15; *Adm'rs of Donnington v. Adm'rs of Mitchell*, 1 Green, Ch. 243. If he abandon or desert her, she may have, by order of court, maintenance from his property; but during this maintenance he is not liable for her debts.

R. S. tit. 33, c. 3, § 10. She cannot dispose of real estate by will. R. S. tit. 10, c. 10, § 3. If the husband dies leaving a family, his household goods to the value of \$200, and real estate occupied by him at his death to the amount of \$1,000, are secured to his widow and children; and no waiver of this exemption is valid. Public Acts of 1851, p. 278, § 4; Public Acts of 1852, p. 222, § 1. Nor can such homestead be sold or encumbered, unless other \$1,000 are invested in other buildings for a homestead; and until this investment the title of the purchaser is not good. *Id.* § 7. In a joint deed by husband and wife (if she be of full age), her covenants of warranty will bind her in the same manner as if she were unmarried. If her husband be a lunatic, or confined in the State prison for crime, she may dispose of her interest in any property, so as not to interfere with his rights in the same property. Laws of N. J. 1857, c. 189, 277. If living apart from her husband, she may, by joining his name with hers (though without his consent), bring her suit in any court of record; and he cannot control, release, or discontinue such action. In such case she may also, by decree of court, convey any interest in real or personal property, except a gift from her husband, without his concurrence, but cannot affect any right which he may then have in such property. *Id.* c. 337, 344.

## NEW YORK

In this State, all a married woman's real and personal estate, whether acquired before or after marriage, if not from her husband, may be held by her for her own use, as if she were unmarried, and is not liable for his debts nor subject to his control. R. S. Part II. c. 8, tit. 1, art. 6, §§ 65-67, 68. Power of disposal may be given her in any conveyance or devise to her, and she may execute them without the husband's concurrence. Part II. c. 1, tit. 2, art. 3, §§ 93, 100, 103, unless their terms require that. *Id.* § 123. But she must acknowledge it privately, as she must also in cases of conveyance. *Id.* § 130. The husband may administer on her estate, and is liable for her debts to the extent of assets received from her property, and is liable for the whole if he does not take out letters. Part II. c. 6, tit. 2, art. 2, § 29. Antenuptial contracts are valid. Part II. c. 8, tit. 1, art. 6, § 69. Insurances of life for her benefit are secured to her if the premium does not exceed \$300. *Id.* § 70. Her receipt is valid for her deposits in any bank. *Id.* § 73. She may vote by proxy in corporations, of which she is a member, except mutual fire insurance companies. *Id.* § 74. She may have the custody of minor children by order of court. *Id.* tit. 2. In an action between herself and her husband she may sue and be sued alone. *Id.* Part II. c. 4, tit. 3, § 114. Only her separate estate is liable for her debts before marriage. Public Acts of 1853, c. 576, §§ 1, 2. Insurance effected by married woman on her husband's life, in case of her death before him, goes to his or her children, for their use, as shall be provided by the policy, and to their guardians if under age. Laws of N. Y. 1862, p. 214. She may convey her real or personal estate, and her covenants of warranty bind her separate property. She may sue and be sued, and may bring actions in her own name for injuries to her person and character; money received as

compensation in such cases is her separate property. No bargain made by her respecting her sole property, or in the carrying on of any trade, will render her husband or his property liable. Nor is he liable for costs of action brought in her name. He cannot apprentice her child or part transfer control of him, without her consent in writing. Judgments may in all cases be enforced against her separate property as if she were *sole*. *Id.* 1862, c. 172. She may act as an executrix or administratrix or guardian of minor, and her bonds given in these respects bind her as an unmarried woman. *Id.* vol. ii. 1867, p. 1927. In any action except a criminal one, the husband or wife of any party thereto, or of any person in whose behalf it is brought, are competent witnesses, and are so to prove the fact of marriage in case of bigamy. *Id.* pp. 21, 22. A homestead of the value of \$1,000 is exempt from execution. Laws, 1850, c. 260; Rev. St. tit. 1, p. 3, c. 6, § 28.

## NORTH CAROLINA.

In this State, a marriage settlement or contract is invalid against creditors if a greater value is secured to the intended wife and children of the marriage than is received with her in marriage, and the estate of the husband free from debt at the time of the marriage. In case of suit, the burden of proof is on the person claiming under such contract. A legacy to the wife in general words and not in trust, or a distributive share of an intestate estate falling to her during coverture (if the estate of the husband and wife is not at the time of the marriage thus sufficient), is taken as a part of the portion received with the wife. Revised Code, c. 37. Real estate belonging to the wife at the time of the marriage cannot be sold or leased by the husband, except with her consent, ascertained by private examination, and no interest of the husband therein is subject to execution against him. *Id.* c. 56, § 1. The proceeds of the wife's land sold by court are secured to her or her representatives. *Id.* c. 82, § 7. Provision also exists by which a married woman may insure the life of her husband for her sole benefit, c. 56, § 2. Power may be given her by will, deed, &c., to dispose by will of property thereby conveyed, c. 119, § 3. If she marry under the age of fifteen, unless her father assents to the marriage in writing, her estate is secured to her separate use, c. 68, § 10. Homestead exempt from execution to the value of \$1,000. Public Laws, 1868-69, p. 333.

## OHIO.

In this State, the interest of the husband in the wife's real estate, and her personal and real property, held at her marriage, or subsequently acquired, is her own separate property, not liable to the control, or for the debts, of her husband. Swan & Sayles's Supplement to Rev. St. 1868, pp. 389, 390. But she cannot affect the husband's curtesy. *Id.* The husband of an insane wife may be authorized to sell his real estate without her joining, free from her dower. Swan's Rev. St. 1860, p. 852. The husband must be joined with the wife in all actions to which she is a party, except those concerning her separate property, when she may sue by her next friend; as she may in actions between themselves, except for divorce

or alimony, when she sues alone. Id. p. 953. Husband and wife may not testify for or against each other while the relation subsists or afterwards. Id. p. 1038. As to the rights of the wife to children and property when her husband joins the Shakers. Id. 1395. The husband or wife may insure his life (the annual premium not to exceed \$150, otherwise the surplus insurance to go to his representatives) for the benefit of her and her children. Id. p. 737. A married woman may dispose of her property by will. Id. p. 1615; and the will of a *feme sole* is not revoked by her subsequent marriage. Id. p. 1622. The homestead to the value of \$500 is exempt from execution, &c. Id. p. 1145. A married woman whose property is appropriated for public use is empowered to do any thing necessary for an owner to do, as if she were unmarried. Id. 1859, p. 147. She has full power to contract for repairs and for cultivating her own property in her own name, during coverture, but cannot lease for a longer period than three years, and during her life, and the life of any of her heirs; such property cannot be taken by his creditors; but his estate by curtesy remains: and in all actions in regard to her separate estate it only is liable for any judgment rendered. Id. 1866, pp. 47, 48.

#### OREGON.

In this State, the property of a married woman is deemed her separate property, and not liable for the debts of her husband, from and after her declaration of her intention to hold it as separate, duly executed and acknowledged, shall be recorded by the county clerk, unless the same be afterwards revoked by her. Compiled Statutes, 1864, p. 786; Laws of 1866, p. 6. Husband and wife may convey her real estate by their joint deed; but she is not bound by any covenant therein. Comp. L. p. 646.

#### PENNSYLVANIA.

In this State, the wives of mariners and others at sea may trade as, and have generally the rights of, *femes sole*. Purdon's Digest of Laws of Penn. (9th ed. by Brightly, 1862), p. 474. The husband administers upon his deceased wife's estate, and she generally upon his. Id. p. 277. She retains all property owned before or obtained after marriage, free from the control or debts of her husband. Id. p. 609. He is not liable for her antenuptial debts. Her property is liable for her debts and torts, and execution must first be had against it. Id. p. 700. And she may dispose of it by will. Id.; Lancaster Co. Bank v. Stauffer, 10 Penn. St. 398; Lefever v. Witmer, id. 505; Cumming's Appeal, 11 id. 272; Goodyear v. Rumbaugh, 13 id. 480; s. c. Law Jour. July 29, 1850. But (except in case of property held in trust for her separate use by virtue of the terms of a deed or will) her power to bequeath is restricted, so that her surviving husband may elect to take such interest in her property as she, surviving, could elect to take in his; or else his estate by the curtesy. Id. p. 701. She may sue alone for her money, or perhaps with her husband, Goodyear v. Rumbaugh, *supra*; and with her husband for her estate, a recovery to be for her benefit, or maintain trespass for injury to her property, though he dissents, and

he cannot sue therefor alone. *Goodyear v. Rumbaugh, supra.* Marriage does not, even with her consent, dissolve her testamentary guardianship. *Cumming's Appeal, supra.* His property is first liable for necessities; for want of it, the wife's. *Id.* 700. He retains his estate by the curtesy, *id.*; but as to when it is generally liable to his creditors, see *id.* p. 1093; *Lancaster Co. Bank v. Stauffer, supra*; *Lefever v. Witmer, supra.* A trustee may be appointed of a married woman's property, and she may declare trusts. *Dunlop, p.* 1096. There are also provisions by which claims for personal injury to the husband survive to the widow, *id.* p. 1145; by which married women may loan to their husbands, *id.*; and for insanity of the wife. *Id.* p. 1170. If the husband does not provide for his wife, or deserts her, she has the rights of a *feme sole*; and if intestate, her property descends as if he had previously died. *Id.* 702. In such case, or if divorced *a mensa et thoro*, she may maintain an action for slander or libel, and may recover her separate earnings and property; but if her husband is defendant, in the name of her next friend. *Id.* If of lawful age, and entitled to a legacy, &c., she may execute a refunding bond and other instruments to an executor or administrator. *Id.* No judgment obtained against her husband before or during marriage shall bind or be a lien on her real estate, or his interest as tenant by curtesy. And by joining with him she may convey any lands conveyed to or acquired by her to her separate use, which conveyance will be as valid as if in execution of a power contained in the deed creating such estate. *Laws of Penn.* 1863, pp. 212, 215. But if such right has been withheld in the deed, will, or other instrument which created the separate estate, she cannot convey. *Id.* 1867, p. 67.

## RHODE ISLAND.

In this State, there is a provision substantially like that in Massachusetts as to a married woman coming into the State without her husband, and there living without him. *Rev. St.* 1857, p. 314. Rents and profits of her real estate secured to her. Her chattels real, furniture, plate, jewels, shares in an incorporated company, money deposited in savings-bank, or debts due to her and secured by mortgage, may be transferred by joint deed of husband and wife. All other personal estate she may dispose of as if unmarried. *Id.* p. 316. Any married woman may dispose of her real estate by will, but not to deprive her husband of his tenancy by the curtesy. *Id.* 317; *Acts and Res., January Session, 1856, p.* 68. Her deposits in an institution for savings are her own property. *Id.* p. 73. Any policy of insurance for her benefit, not exceeding the sum of \$10,000, is hers, independently of her husband or the person effecting the insurance, or the creditors of either. *Public Laws, 1860, p.* 96.

## SOUTH CAROLINA.

In this State, the real and personal property of a married woman, whether held by her at the time of the marriage, or accrued to her thereafter in any way, shall be her separate property, and not subject to levy or sale for her husband's debts. *Statutes of 1870, No.* 220. She may bequeath, devise,

or convey her separate property, as if unmarried; and, if she dies intestate, her property shall descend in the same manner as is provided for the property of husband. She may purchase any property, and contract in reference to it, as if unmarried. *Id.* Her husband is not liable for her debts contracted before marriage, nor for those contracted after, except for her necessary support. *Id.* A homestead of the value of \$1,000 is exempt from execution. Stat. of 1868, No. 16; and also \$500 worth of personal property. Stat. of 1870, No. 273. When the action concerns her separate property, she may sue and be sued alone. Stat. of 1870, tit. 3, p. 451; and judgment may be entered against her separately, and execution be levied on her separate property. *Id.* p. 491.

## TENNESSEE.

In this State, the wife may manage her own and her husband's property, when he is incapacitated. Code of Tenn. 1858, p. 488; and her property is not liable in such case for his debts. *Id.* Property acquired by her, subsequent to an abandonment by him, or separation from him, in consequence of ill usage, is not liable for his debts. If she live with him again, it is. *Id.* p. 488. Marriage contracts are not good where more property is concerned than the portion actually received with the wife at the time of marriage; but subsequent legacies to her are considered as property received by her. *Id.* p. 369. A *feme covert* may dispose by will of her own estate. *Id.* p. 488. A homestead of the value of \$500 is exempted from execution, and shall not be aliened, if the owner be married, except by the joint deed of him and his wife. *Id.* p. 431.

## TEXAS.

In this State, the marriage of a female minor gives her all the right she would have if of age. Paschal's Digest of Texas Laws, 1860, art. 4632. All property acquired by either party before marriage, or by gift, devise, or descent afterwards, is the separate property of each; but the husband has the management of the whole. *Id.* art. 4641. Property acquired by either during marriage, in other ways, is common; the husband may dispose of it during coverture; if there are no children, the whole goes to the survivor, otherwise one-half. *Id.* art. 4642. The parties may be jointly sued for necessities and for expenses benefiting the wife's separate estate. *Id.* art. 4643. Execution may be levied on common property, or her separate property, at the plaintiff's option. *Id.* art. 4644. Marriage agreements must be made before a notary, and may be acknowledged by a minor, with the parent's or guardian's consent, *id.* art. 4633; and are unalterable after marriage. *Id.* art. 4634. A reservation of property therein to be good must be recorded. *Id.* art. 4635. Husband and wife may sue jointly and separately for her effects. *Id.* 4636. The homestead, not exceeding fifty acres of land, and not exceeding \$500 of improvements (or, if in a town or city, \$2,000 in value), is exempt from execution. Const. of Texas, art. 7, § 22. The wife acts jointly with her husband when she is appointed executrix or administratrix. *Id.* art. 1234.

The survivor takes the common property subject to its debts; nor is it necessary for her husband to administer on such property on her death, as he has the same control of it then that he had in her lifetime. In case of his death, she has the same control, till she marries; when it will be subject to administration. *Id.* art. 4647, 4652. Husband may fill antecedent contracts, and be compelled to give bonds for the proper management of the common property. *Id.* art. 4650. Her separate property is not chargeable with necessities procured for him. *Id.* art. 4641, § 4. The common property is liable for all debts contracted during marriage. *Id.* art. 4646. Either may by will give to the survivor the power to keep his and her separate property together, until each of the several heirs come of age; and to manage and control it, subject to law and the provisions of the will. *Id.* art. 4653.

## VERMONT.

In this State, in case of desertion, the Supreme Court may authorize a wife of eighteen years of age to convey her real estate, and the personal estate which came to her husband through her, if in the State and undisposed of by him; and require any one owing her husband money in her right to pay it to her; and the proceeds, and her own earnings, and those of her minor children, shall be held by her for her own use. *Laws of 1869, No. 13; and Gen. Stat. 1863, p. 469.* If the real estate of a wife be taken for public use, the damages are to be secured to her benefit. *Id.* p. 470. The wife of a man under guardianship may join with the guardian in making partition, &c. *Id.* p. 470. The wife of a man confined in the State prison is a *feme sole* as to suits for causes arising after his sentence. *Id.* 471. Married women may devise by will their inheritable real estate. *Id.* The rents, &c., of all her real estate, and her husband's interest in it, shall be exempt from attachment or execution for his sole debts, nor can he convey them without her. *Id.* She may insure the life of her husband for her own use, if the premium do not exceed \$300. *Id.* 472. The homestead, not exceeding \$500 in value, exempt from sale on execution. *Id.* p. 456; *Acts of 1851, No. 29.* The earnings of a married woman and her deposits in savings-bank are not subject to trustee process by her husband. *Gen. Stats. pp. 305, 549.* The annual product of her real estate is subject to the payment of necessities for herself and family, and for work and materials for their benefit. Stocks and bonds given to her by a parent are governed by the same law. *Id.* 47, § 18. When abandoned by her husband, she may maintain an action in her own name, as if unmarried. *Laws of Vermont, 1866, p. 43.* All personal property, and rights of personal property acquired during coverture, or by inheritance or distribution, shall be held to her sole and separate use. *Id.* 1867, p. 29.

## VIRGINIA.

In this State, the husband of an insane wife may make a deed to bar her right of dower, on leave of court; but the same interest in the proceeds shall be secured to her. *Code of Virginia, tit. 36, c. 128, § 11.* If



the husband die intestate, and without issue by her, she has the personal property which he had from or with her, and which he has not disposed of, if his other personal estate suffices to pay his debts. Id. tit. 33, c. 123, § 10. She can make no will except of her separate estate, or by a power of appointment. Id. tit. 33, c. 122, § 3. A homestead, not exceeding one hundred and sixty acres of land, including the buildings thereon, and not exceeding \$1,200 in value. Acts of Assembly, 1867, c. 139.

#### WEST VIRGINIA.

In this State, the Code of Virginia remains in force in these respects.

#### WISCONSIN.

In this State, the marriage of a *feme sole* executrix or administratrix extinguishes her authority, Rev. St. c. 67, § 8; c. 68, § 13; and of a female ward terminates the guardianship. Id. c. 80, § 27. The husband holds his deceased wife's lands for life, unless she left by a former husband issue to whom the estate might descend. Id. c. 62, § 30. Provisions exists by which powers may be given to married women, and regulating their execution of them. Id. c. 58, §§ 8, 15, 40, 44, 57. If husband and wife are impleaded, and the husband neglect to defend the rights of the wife, she, applying before judgment, may defend without him; and if he lose her land by default, she may bring an action of ejectment after his death. Id. c. 3, §§ 3, 4. The real estate of females married before, and the real and personal property of those after Feb. 21, 1850, remain their separate property. And any married woman may receive, but not from her husband, and hold any property as if unmarried. Laws of 1850, c. 44. She may insure the life of her husband, son, or any other person, for her own exclusive benefit, but the annual premium must not exceed \$300. Laws of 1862, c. 182. A homestead of forty acres, used for agricultural purposes, or one-fourth of an acre within a recorded town plot, or city, or village, is exempt from sale on execution. Rev. St. c. 134, § 23; Laws of 1863, c. 88; Laws of 1864, c. 270.

### MARRIAGE.

The relation of marriage is founded upon the will of God and the nature of man, and is the foundation of all moral improvement and all true happiness. No legal topic surpasses this in importance; but some of the questions which it suggests are of much difficulty.

No question can be more important than what constitutes a legal marriage; for what can be more important to any one than to know certainly whether he or she is or is not a husband or a wife; and yet there may be some uncertainty about it, not merely from the peculiar facts of an individual case, but from a want of precision and certainty in the principles or rules which decide this question. If persons are married in the usual way, before a magistrate or a minister authorized to solemnize marriage, there is no question; but there is some question whether a marriage is valid and effectual which consists merely of a contract between the two parties, with mutual promise and acceptance, with or without witnesses, and followed by cohabitation as man and wife; but not solemnized in the method by which the laws of that place authorize marriage.

It may be considered as certain that the evidence of marriage from cohabitation, acknowledgment by the parties, reception by the family connection as man and wife, and general reputation, is receivable in nearly all civil cases. This, however, proceeds upon the ground of the actual probability that there was a regular marriage where such evidence exists. The presumption of such marriage arising from such evidence is always strong; and in some States perhaps, especially in New York, this presumption has been pushed very far. It may be said that of late years many courts have manifested a tendency towards the view that such a mere contract, with no especial formality, might suffice to make a valid marriage; and some cases come near to this conclusion. Nevertheless, we can only say that we know of no case whatever in which a mere agreement to marry, with no formality, and no compliance with any law or usage regulating marriage, is actually permitted to give to both of the parties, and to their children, all the rights and duties, and impose upon them all the obligations and liabilities, civil and criminal, of a legal marriage. We have referred to New York, and we may add Pennsylvania and Alabama, as States in which the courts appear to incline to the view that no especial form or ceremony is necessary. On the other hand, from cases in California and Oregon, it would seem that in those States the marriage is not legal unless

the contract be declared before a person authorized to solemnize marriages, and in the presence of witnesses.

**It is everywhere agreed that a precise compliance with all the requirements or directions of law has not been deemed necessary.** As to some important provisions, it has been held that a disregard of them was punishable, but did not avoid the marriage; as the want of consent of parents or guardians where one party is a minor, or an omission of the publication of banns. The essential thing seems to be the declaration of consent, by both parties, before a person authorized by law to receive such a declaration.

**Consent being of the essence of this contract, it cannot be valid** if made by those who, when they made it, had not sufficient mind to consent; as by idiots or insane persons. Such a marriage is voidable during the life of both parties; but if it be not set aside during the husband's life, his wife becomes entitled at his death to the rights of a widow. The Supreme Court in any State, and especially a court having full powers of equity, may make inquiry into the validity of the marriage, and decree accordingly that it is valid or void. Marriages are also void if another husband or wife of either of the parties be living, or if they are within the prohibited degrees of kindred; and voidable by the injured party, if procured only by force or fraud.

**The wife may everywhere, even by common law, be the agent** of the husband, and transact for him his business transactions, making, accepting, or indorsing bills or notes, purchasing goods, rendering bills, collecting money and receipting for it, and in general entering into any contract so as to bind him, if she has his authority to do so. And while they continue to live together, the law considers the wife as clothed with authority by the husband to buy for him and his family all things necessary in kind and quantity for the proper support of his family; and for such purchases made by her he is liable.

**The husband is responsible for necessities supplied to his wife,** if he does not supply them himself. And he continues so liable if he turns her out of his house, or otherwise separates himself from her, without good cause. But he is not so liable if she deserts him (unless on extreme provocation), or if he turns her away for good cause.

**If she leaves him because he treats her so ill that she has** good right to go from him and his house, this is the same thing as turning her away; and she carries with her his credit for all necessities supplied to her. But what the misconduct must be to give this right is uncertain. Some English cases are very severe on this point. In one, a husband brought a prostitute into his house, and

confined his wife to her own room under pretence of her insanity. But the court held this to be insufficient. The Supreme Court of New York, in commenting upon this case, said that "the doctrine contained in it cannot be law in a Christian country." In America the law must be, and undoubtedly is, that the wife is not obliged to stay and endure cruelty or indecency.

It may be added, that if a man lives with a woman as his wife, and represents her to be so, he is liable for necessities supplied to her, and for her contracts, in the same way as if she were his wife; and this even to one who knows that she is not his wife.

The statutes of which we have given an abstract are intended to secure to a married woman all her rights. But in all parts of this country, women about to marry — or their friends for them — often wish to secure to them certain powers and rights, and to limit these in certain ways, or to make sure that their property is in safe and skilful hands. This can only be done by conveying and transferring the property to TRUSTEES; that is, to certain persons to hold the same in trust. This is done by a legal instrument, which is almost always an *indenture*; by which is meant an instrument under seal between two or more parties. This instrument must set forth precisely, and with legal accuracy, just what the trust is; that is to say, just what the trustees or the woman or her husband *may* do, and just what they *must* do. This is one of those instruments which require peculiar care and exactness. We give as models or forms, two, differing in their terms and purposes. Both were drawn by very skilful lawyers, and will, with such changes of omission or addition or alteration as the circumstances of any case or the wishes of the parties make necessary, be useful and safe guides in the preparation of such instruments.

(13.)

AN INDENTURE TO PUT IN TRUST THE PROPERTY OF AN  
UNMARRIED WOMAN.

THIS INDENTURE of two parts, made and concluded this  
day of                A.D. eighteen hundred and                by and between  
                of                single woman, of the first part, and  
and                of                of the second part,

WITNESSETH, That the said party of the first part is seised and possessed of certain real and personal estate, to wit, one undivided moiety of the reversion in and of a messuage and land in                      bounded as follows:

a mortgage of a lot of land bounded on

Street, and described

in the deed of                      to                      which is recorded in the  
 Registry of Deeds, lib.                      fol.                      a mortgage of a lot of  
 land bounded on                      Street, and described in the deed of  
 recorded in the said registry, lib.                      fol.                      a mortgage  
 of two lots of land, bounded on                      Street, and described in the  
 deed of                      to                      recorded in the said registry, lib.  
 fol.                      a mortgage of a lot of land bounded on                      Street,  
 and described in the deed of                      to                      recorded in the  
 registry aforesaid, lib.                      fol.                      one hundred shares in the  
 capital stock of the                      Bank, in                      twenty-five shares  
 in the capital stock of the                      Bank, in                      and fifty  
 shares in the capital stock of the Bank of                      also a note of hand,  
 signed by the said                      for the sum of fifteen thousand dollars; a  
 note of hand, signed by the said                      for the sum of three thou-  
 sand dollars; a note of hand, signed by                      and                      for  
 the sum of two thousand five hundred dollars; a note of hand signed by  
                     for the sum of six thousand dollars, which notes are severally  
 secured by the lands and tenements, mortgaged as aforesaid; also a note  
 of hand, signed by                      for the sum of one thousand dollars.

All which real and personal estate the said party of the first part is  
 desirous that the party of the second part should have and hold in trust  
 for certain uses and purposes hereinafter set forth and expressed; and in  
 conformity with said intention, and for the purpose of carrying the same  
 into effect, the said party of the first part, in consideration of the sum of  
 five dollars paid to her by the party of the second part, the receipt of  
 which she doth hereby acknowledge, and for divers other good considera-  
 tions moving her thereto, hath given, granted, sold, and conveyed, and  
 doth give, grant, bargain, sell, and convey, all the said lands, tenements,  
 and real estate, and doth hereby bargain, sell, transfer, assign, and set  
 over all the aforesaid chattels and personal estate, as the same are above  
 specified and described, unto the said                      .                      and                      and their  
 heirs and assigns. To have and to hold the said granted premises unto the  
 said                      and                      and their heirs and assigns, and to the  
 survivor of them, and his heirs and assigns for ever, to their own use, but  
 in trust nevertheless for the purposes, objects, and intents hereinafter set  
 forth and expressed, and for none other, namely: —

*First.* That the said trustees and their successors in the said trust shall  
 permit the said party of the first part, without any hinderance or inter-  
 ference by them, so long as she shall remain sole and unmarried, and shall  
 see fit so to do, to receive and take in her proper person, or by her agent  
 or attorney, the rents, income, dividends, interest, and profits of the said  
 trust estate, real and personal, without any accountability therefor, to  
 them the said parties of the second part; but if required by her, the said  
 party of the first part, so to do, the said trustees and their successors shall  
 collect and receive the said rents, income, and profits of the trust estate,  
 and shall from time to time pay over the same unto the said party of the  
 first part for her own use.

*Secondly.* That from and after the solemnization of the marriage of the said party of the first part, whenever that event may take place, the said trustees and their successors shall collect, take, and receive all the rents, income, and profits of the trust estate, real and personal, and shall from time to time pay over the same to the said party of the first part, to and upon her separate order or receipt, made and signed by her, at or about the time of such payments respectively and for her proper use, free from the control or interference of any husband she may have.

*Thirdly.* That at and after the decease of said party of the first part, the said trustees and their successors shall be seised and possessed of the said trust estate to and for the use of such person or persons as the said party of the first part, by any last will and testament, duly executed, if she die sole and unmarried; or, in case she be at her decease a married woman, by any paper writing signed by her in presence of two or more credible witnesses, shall order, and appoint to take, receive, and hold the same, and in such shares and manner, and upon such terms and conditions, as she shall direct, order, and appoint as aforesaid: and in case the said party of the first part shall omit to make any such will or testamentary appointment, then the said trustees and their successors shall hold the trust estate to the use of such person or persons as by the laws of this Commonwealth would, in case the party of the first part had died seised and possessed of the then existing trust property in her own right, have been entitled to the same as heirs-at-law, or distributees; provided, always, that in such case the husband of the said party of the first part, if she leave a husband, shall be entitled to his life-estate in all the real estate, as if he were tenant by the curtesy in and of the same, and be subject to all the duties incident to a tenant by the curtesy.

*Fourthly.* That the said trustees and their successors shall keep the said trust estate, real and personal, constantly invested in the most safe and profitable manner in their power, but relying always on their discretion in this behalf; and shall accordingly have power to sell and dispose of any of the said trust estate, and to make and pass all necessary deeds and instruments of conveyance thereof, and to purchase any other estate, real or personal, and the same to sell again, and so from time to time to change the property composing the trust fund and estate; provided, always, that all real and personal estate which may be purchased by them the said trustees with the trust moneys, or the proceeds of sale of the trust property, shall be conveyed and assigned to them and their successors as trustees as aforesaid, and shall be holden always upon the same trusts, and with the same powers, and for the same purposes, as are set forth and declared in this indenture of and concerning the estate firstly above described and conveyed to the said trustees.

*Fifthly.* That the said trustees or their successors, in case the said party of the first part shall so order and direct, shall invest the trust money or estate, or such part thereof as they shall be ordered as aforesaid, in the purchase of such house for the habitation and dwelling of the said party of the first part as she may select, and shall lay out and expend such other part of the said trust money and estate as she, the said party, shall order and direct, in the purchase of such furniture, plate, horses, and equipages as

she may choose and select for her own use; and shall permit her, the said party of the first part, with any husband she may have, to occupy and inhabit the said house, and to use and enjoy the said furniture, plate, carriages, and horses, without impeachment of waste, and without any accountability to them the said trustees for the reasonable wear and use thereof, or injury by casualty; and the trustees shall keep the said house and furniture insured against fire, and, in case of loss or injury by fire, shall lay out and expend the money which they may receive from the assurers in the repairing or rebuilding of the said house, if so directed by the said party of the first part, and in the purchase of other and new furniture, plate, horses, and equipages, in place of those which have been injured or destroyed by fire, and shall permit the said party of the first part to use and enjoy the same in manner aforesaid. And the said trustees and their successors shall, when required by the said party of the first part so to do, sell and dispose of any house which may have been purchased by them for the personal occupation and habitation of the said party of the first part, and shall in manner aforesaid lay out the proceeds of sale of such house, and such other moneys as she shall direct, in the purchase of such other house as she shall select and direct them to purchase, and shall permit her to occupy the same in manner above set forth and expressed; and they shall also, when directed by the said party of the first part, sell and dispose of any of the furniture and other chattels so as aforesaid purchased by them for her use, and shall from time to time lay out and expend the proceeds of such sales and such other sums of money as they shall be directed by the said party of the first part to do, in the purchase of such other furniture, plate, horses, and equipages as she shall select for her own use; and shall permit her to use and enjoy the same in manner aforesaid: provided, always, that in case of any attempt by any person to sell or remove the said furniture or other chattels out of the personal care and custody of the party of the first part, without the consent of the trustees, they shall forthwith take possession thereof, and convert the chattels so attempted to be removed or sold into money, and shall hold the said money upon the trusts and for the uses set forth in this indenture; and in all the cases in which any order or direction shall be given by the said party of the first part, it shall be in writing, and be signed by her in presence of one witness at least.

*Sixthly.* That in case of the decease of the said trustees, or either of them, others shall be nominated by the party of the first part, (if she see fit so to do), to be appointed as trustees in the place of the deceased; and upon such nomination being made and notified to the surviving trustee, he shall forthwith, if such person be suitable, make and execute all such instruments in the law as shall be needful, in the opinion of counsel, to associate such person in the said trust, and to transfer and convey to him the same interest in the trust estate, with the same powers over the same, and subject to the same duties, as are vested in and assumed by the parties of the second part, in and by this instrument and the laws of the land. And in case either of the said trustees, the parties of the second part, or their successors, shall wish to resign said trust, they shall be at liberty to

do so, first giving reasonable notice to the party of the first part, that she may find some suitable person, who shall be acceptable to the remaining trustee, to assume the said trust in place of the trustee resigning; and the same proceedings shall then be had for the introduction and appointment of a new trustee as are above provided in case of the decease of a trustee; and in case of the decease or resignation at any time of any of the persons who may be hereafter appointed trustees, in manner aforesaid, similar proceedings shall be had for supplying the vacancy created by such decease or resignation. And the trust fund, property, and estate shall always be had and held by the persons so appointed from time to time in trust for the uses and purposes set forth in this indenture, and none other. And all nominations made as aforesaid shall be in writing.

*Seventhly.* That the purchasers of any estate, real or personal, which may be sold and conveyed by the trustees under this indenture, shall not be bound to see to the application of the purchase-money; but the receipt and acquittance of the trustees shall be a full and adequate discharge to such purchasers for such purchase-money.

*Eightily.* That all the expenses and incidental charges of the trustees shall be deducted from the income of the trust property, as well as a reasonable allowance to the trustees for their own services.

*Ninthly.* That the resignation of any trustee shall not be, nor be pleaded as, a bar to the chancery jurisdiction of the courts of the Commonwealth, in case a resort against such trustee to the said court shall be necessary.

*Tenthly.* That the trustees under this indenture, each for himself and not for each other, shall be responsible for the want of due diligence only in the execution of the said trusts and for their wilful defaults; and in case of the omission by the party of the first part to nominate a successor to either of the parties of the second part, or to any person appointed instead of them, or either of them who may resign or decease, the surviving or continuing trustee shall have power and authority to execute all the trusts herein specified and declared, in as ample manner as both the said parties of the second part might jointly have done.

IN TESTIMONY WHEREOF, The said \_\_\_\_\_ and \_\_\_\_\_ hereto  
set their hands and seals, the day and year first above written.

(Signatures.)      (Seals.)

Signed, sealed, and delivered in presence of

(Witnesses.)

MAY 18

Then the within-named \_\_\_\_\_ acknowledged this instrument to be his free act and deed, before me.

(Signed) *Justice of the Peace*



(14.)

ANOTHER FORM OF INDENTURE IN TRUST, FOR PROPERTY OF  
UNMARRIED WOMAN.

THIS INDENTURE, Made and concluded this                      day of  
in the year of our Lord one thousand eight hundred and                      by and  
between                      of                      in the county of                      single woman,  
of the one part, and                      of said                      the father of the said  
                    of the other part: Witnesseth,

Whereas the said                      is seised and possessed in her own right,  
as tenant in common, of one undivided fifth part of the following described  
real estate:

and is also seised and possessed of and in one undivided fifth part of a  
certain piece of land, situate on                      Street in said                      with  
the buildings thereon standing, and privileges and appurtenances thereto  
belonging; the whole of which were conveyed by                      to  
by deed bearing date the twenty-eighth of                      in the year of our  
Lord one thousand eight hundred                      and recorded in the Registry  
of Deeds for said county, lib.                      fol.                      also of and in  
one undivided fifth of one undivided fortieth part of thirty acres of land  
situate in said                      which was conveyed to                      by  
by deed bearing date the eighteenth day of                      in the year of our  
Lord eighteen hundred                      and recorded with Suffolk deeds, lib.  
fol.                      And whereas the said                      is possessed of the  
following personal estate: to wit, of eighteen thousand dollars in the capital  
stock or shares of the                      Bank in said                      as appears by  
a certificate thereof,                      and is also possessed of the promissory note  
of said                      for the sum of fifteen hundred dollars, dated the ninth  
day of                      last, and payable by instalments of five hundred dollars  
in one, two, and three years therefrom; and of another promissory note of  
said                      for five hundred dollars, dated the seventeenth day of  
                    last, and payable in one year therefrom; and also of the bond  
of                      and                      dated the seventh day of                      in the  
year of our Lord one thousand eight hundred and                      conditioned  
for the payment of five hundred dollars and interest, and of the principal  
of which there has been paid one hundred and fifty dollars, and all the  
interest up to the seventh day of                      last. And whereas she, the  
said                      is desirous of securing the said estate, both real and  
personal, in the event of her marriage, to her sole use and benefit; and for  
this purpose it hath been agreed, that all the estate and property afore-  
said shall be granted, assigned, and transferred unto the said  
and to such other trustee as shall hereafter be appointed according to the  
provisions hereinafter expressed, to be held in trust by them for the sep-  
arate and sole use and benefit of her, the said                      and her heirs  
(notwithstanding any such coverture), upon the terms and conditions, for  
the uses, intents, and purposes, under the limitations, and for and during  
the time, as hereinafter is expressed.

Now, this indenture witnesseth, that the said \_\_\_\_\_ in consideration of the premises, and of the covenants hereinafter contained, and also of one dollar now paid to her by the said \_\_\_\_\_ the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and transferred, and by these presents doth grant, bargain, sell, and transfer, unto the said \_\_\_\_\_ his heirs and assigns, for ever, all the real and personal estate, stocks, notes, and bond, hereinbefore described and specified:

To have and to hold the same to him, the said \_\_\_\_\_ his heirs and assigns, for ever, to and for the several uses, trusts, and purposes, and subject to the several provisions, limitations, powers, and agreements, hereinafter limited, declared, and expressed; that is to say, to the sole use and behoof of the said \_\_\_\_\_ and her heirs until the solemnization of any such marriage, and, from and immediately afterwards, to and for the following uses, intents, and purposes: to wit,

That the said estate, both real and personal, stocks, notes, and bond, shall be held, during the natural life of the said \_\_\_\_\_ by him, the said \_\_\_\_\_ and by such other trustee as shall be appointed for that purpose in the manner hereinafter expressed and provided, to the sole use and separate benefit of her, the said \_\_\_\_\_ without being liable to the debts, incumbrances, or control of any husband she may have during the existence and continuance of said trust: that said \_\_\_\_\_ shall, from time to time, lease and demise said real estate to the best profit and advantage; and, at such time as he shall see fit and think proper, sell and dispose of all or any part of said real estate, upon the most advantageous terms, for the interest of said \_\_\_\_\_ and shall invest the proceeds thereof in the safest and most productive funds; and, upon payment of the capital stocks, notes, or bond aforesaid, invest the same in like manner: that he shall pay all the rents and profits of said real estate while unsold, and the clear interest and income of said funds, and also the clear interest and income of said personal property hereby assigned, and all the net profits arising and accruing therefrom, as well as such portion of the principal as he shall judge necessary for her convenience and support, unto her, the said \_\_\_\_\_ or to such person or persons as she shall in writing, without the signature or interference of any husband, appoint, for and during the natural life of her, the said \_\_\_\_\_ that is to say, for and during the term for which said \_\_\_\_\_ trust shall continue, according to the provisions and limitations hereinafter expressed; and, after the decease of the said \_\_\_\_\_ the remaining income and profit unpaid, to the child or children of the said \_\_\_\_\_ if she shall leave any; and, upon such decease, grant, convey, and transfer the same estate, both real and personal, and any investments in funds, unto such child or children, his and their heirs and assigns, for ever; and also grant and convey, in like manner, any real estate which may be purchased with the proceeds of said property: and, in case the said \_\_\_\_\_ should die without issue, then to grant, convey, and transfer the same, in like manner, unto the heirs-at-law of her the said \_\_\_\_\_

And the said \_\_\_\_\_ for himself, his heirs, executors, and administrators, doth covenant, grant, and agree, to and with the said \_\_\_\_\_ her executors and administrators, that in case she, the said \_\_\_\_\_

should desire any real estate to be purchased with any part of said capital stock, funds, or interest, of the estate and property hereby conveyed, and it should be deemed advantageous and proper by the said to comply therewith, then he will make a purchase thereof, and take deeds of conveyance of such estate in his own name, and will hold the same subject to the like trusts, limitations, powers, and agreements as are herein limited, declared, and expressed; and will pay over the rents and income thereof as is above provided, unless she, the said shall choose to occupy

and live on the same; and, in such case, no rents shall be exacted or required of any husband of the said And in case of mental infirmity, or any other incapacity, which shall, in the opinion of the judge of probate for the county of for the time being, prevent a suitable execution of the aforesaid trusts by him, the said he

does also covenant as aforesaid to grant, sell, and transfer the aforesaid estate and property, both real and personal, which shall then remain in his possession and under his control, and such other as he may have purchased in pursuance of the trusts aforesaid, unto any trustee who shall be appointed by the said judge of probate for the time being (who, on the happening of such infirmity or other incapacity, is hereby authorized to make such appointment); to have and to hold the same to such trustee, subject to the several provisions, limitations, powers, and agreements, and upon the same intent, uses, and trusts, in like manner as held by him, said

And upon the happening of the death of him the said he doth further covenant that his heirs or executors or administrators shall and will, as soon as practicable thereafter, make good and sufficient instruments of conveyance to transfer and grant the aforesaid estate, both real and personal, or such parts thereof as shall then remain undisposed of, and such as may be purchased by him, said

in pursuance of the trusts and intent of this indenture, unto such person as shall be appointed the trustee of the said for that purpose by the said judge of probate for the time being; who is, in that event, authorized to make the appointment. And the said doth also further covenant as aforesaid, that upon the death of the said

if he shall then be her trustee under the provisions of this indenture, he will grant, transfer, and assign all and singular the estate and property, both real and personal, which he may then hold under the grant and trusts aforesaid, unto the child or children of her, the said if she

shall leave any. But no grant and conveyance, as is above provided, shall be made unto any such trustee until he shall have given bond, with sufficient sureties, to the judge of probate for said county for the time being, for the benefit of the said and her heirs, upon condition that

he, the said trustee, his heirs, executors, or administrators, shall hold the said estate and property, to be granted and transferred, subject to all the limitations, provisions, powers, and agreements, and for the several uses, purposes, and trusts, in this indenture limited, declared, and expressed; and upon the condition that he shall at all times well and truly observe, fulfil, and perform the same.

And the said trustee so appointed shall thereupon have all the powers, and be bound to perform all the duties, enjoined upon and required by this indenture, of him, the said

IN WITNESS WHEREOF, The said parties have hereto interchangeably set their hands and seals, the day and year first above written.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of  
(Witnesses.)

ss. 30th September, A.D. 18

Then personally appeared the above-named                      and  
and severally acknowledged this indenture to be their free act and deed.

(Signature.)      Justice of the Peace.

### DIVORCE.

Divorce may be of two kinds: divorce from the bond of matrimony, often called by the Latin law phrase *a vinculo matrimonii*; and divorce from board and bed, or *a mensa et thoro*. A divorce *a vinculo annuls* the marriage altogether, and restores the parties to all the rights of unmarried persons, and relieves them from all the liabilities which grew out of the marriage, except so far as may be provided by statute, or made a part of the decree of divorce by the courts. Thus it is a provision of some of our State statutes that the guilty party shall not marry again. And the court generally have power to decree terms of separation, as to alimony (which means the continued support of the former wife by the husband), care and possession of children, and the like; and this decree is subject to subsequent modification.

A divorce *a mensa et thoro* separates the parties, but leaves them still married. Generally, a woman divorced from the board and bed of her husband acquires the rights and powers, as to property, business, and contracts, of an unmarried woman; and her husband is freed from his general obligation to maintain her, the courts having power, which they usually exercise, of decreeing such alimony or maintenance from the husband as his means and the character and circumstances of the case render proper.

In England, when our forefathers came over, and, indeed, until 1857, there could be no divorce *a vinculo*, except by an act of Parliament, the courts having no power to grant such a divorce; now, however, there is in England a court authorized to grant this divorce. The New England colonists brought English law with them; but, as we learn from Mather's *Magnalia*, very early in the settlement of New England the question was put to the clergy, whether adultery was a sufficient cause for a divorce. They answered that it was. The courts of law thereafter decreed divorce *a vinculo* in such cases; and this law and practice became universal in this country. For

many years, however, a divorce *a vinculo* was granted for no other cause than adultery, the law being made to conform to what was regarded as the positive requirement of Scripture. And a divorce *a mensa et thoro* was granted for other sufficient causes. Gradually the severity of the rule as to divorce *a vinculo* was modified, and this divorce was permitted for the causes for which divorce *a mensa et thoro* had been formerly granted. These are mainly desertion, cruelty, and a sentence to long imprisonment. The law and practice in this matter differs somewhat in the different States, being precisely alike in no two of them. In some of them the facility of obtaining a divorce from the bond of matrimony has certainly been carried quite far enough.

In nearly if not quite all the States desertion for a longer or shorter period, sometimes called abandonment, is a ground of divorce. Three years is a common period. Mere absence is not enough, as the desertion must be wilful. In California it is held that absence for a sufficient period implies desertion, unless it be explained. Generally there must be positive proof of the intention to desert. Hence it has been sometimes held that an agreement to separate, either express or inferrible from conduct or language, prevents a decree of divorce. So would conduct which would naturally lead to a separation. But if after such agreement to separate there is an honest desire on either part for a restoration of conjugal relations, and the desire is properly expressed and manifested, and is denied or refused by the other party, the earlier consent to separation does not bar or prevent the divorce. A refusal to accompany the husband in a change of residence, if the refusal were made for good reasons, would bar him from obtaining a divorce on account of separation. But if the refusal were not reasonable, it would be a desertion.

As to the cruelty for which the divorce would be granted, while it seems to be generally held that it must be a cruelty which injuriously affects "life, or limb, or health," it is also held that this may be by any treatment, or even by mere words, which are such as may harm the health. In practice, the courts use proper precautions to prevent a divorce from being obtained by connivance or collusion; and it will not be granted merely upon the consent or the absence of defence of the party charged, but only on proof of the facts for which the divorce is prayed for. Nor will it be granted if there has been a *condonation* by the petitioning party. The general meaning of condonation, as an English word, is forgiveness, but it has, as a law term, and used in this connection, a technical meaning; it is, forgiveness proved by the continued cohabitation of the parties after the guilt of the defendant is made

known to the petitioner. It would seem only just to apply this rule with much less severity to the wife, who may be constrained for many reasons to continue for a time with the guilty husband; whereas a husband is under no such necessity, and should renounce all cohabitation with a wife whom he knew to be an adulteress; and it is well settled that a disregard of this requirement would bar his application for divorce.



**BOOK THIRD.**

**THE PROPERTY RIGHTS OF A CITIZEN OF THE  
UNITED STATES:**

*HOW TO EXERCISE AND HOW TO PRESERVE THEM.*





## BOOK THIRD.

### THE PROPERTY RIGHTS OF A CITIZEN OF THE UNITED STATES.

---

#### CHAPTER I.

#### EMINENT DOMAIN.

In this country all property is held subject to the right of eminent domain. This is the name given in law to the right of the sovereign to take private property for public purposes. This right belongs in this country, first, to the United States; and, secondly, to each State: but the right of each State is confined to property within its boundaries. To this right there are but two limitations, but they are very important. One of these is, that the property must be taken for public purposes; the second is, that full and adequate compensation must be made for the property so taken. Both of these conditions are essential, and only when both exist together can private property be lawfully taken. It follows, therefore, that if there be no public necessity there is no public right; and that if property be taken by the sovereign without such necessity, as there is no public right, land taken by the sovereign, where no such necessity exists, is unlawfully taken, although full and adequate compensation be made. And, on the other hand, if land be taken by the sovereign because of such necessity, and for public purposes, it is unlawfully taken, unless full and adequate compensation be made.

It is not, however, necessary that this compensation should be given at once when the land is taken; it is enough if the law provides the means by which the owner of the land may be sure of obtaining compensation: and it has been well said, that it must be as absolutely certain that the compensation will be adequate, and will be received, as that the land is taken. In all our States there are statutory provisions on the subject, by force of which the value of the property taken is ascertained by commissioners or a jury, under the direction of the court, and payment made.

It should be said, however, that this right to compensation is confined to him whose property is taken, and does not extend to him who is indirectly damaged by the taking or the use of another's property. As, for example, if the legislature of a State, by the exercise of its right of eminent domain, gives to a railroad company the right to take and use certain land for the construction of its road, the owner of the land must be compensated. But if the owner of a mill near by is injured by the diversion of his mill-stream from its former course by what the railroad company does, he cannot demand compensation.

By far the most frequent exercise of the right of eminent domain is by the legislature of a State granting to a road, or railroad, or bridge company, the right to take land for their purposes; these being deemed public purposes, although resulting in profit to individuals.

---

## CHAPTER II.

### THE ACQUISITION OF PROPERTY.

**Property may be acquired in either of six ways.**

**First, by inheritance.** This takes place when a man or woman possessed of property dies intestate (or without a will); then the heirs or next of kin take it, in the proportion which the law points out. If it be personal property, — that is to say, not land, or something affixed to the land, — they take it through the instrumentality of administration.

**Second, by will.** When a person possessed of property makes a will, those to whom he devises or bequeaths his property ("devise" being applied to real estate, and "bequeath" to personal estate) take it either from the executor appointed by the will, or, if there be no executor, by an administrator, with the will annexed.

**Third, by purchase and sale.**

**Fourth, by hiring.**

**Fifth, by gift.**

**Sixth, by finding.**

Each of these will now be considered in its turn.

## CHAPTER III.

THE DISTRIBUTION OF THE PROPERTY  
OF AN INTESTATE.

If a person dies without a will, and possessed of real property, his heirs take it, under the laws of the several States which provide for this matter, and they are called statutes of descent or of inheritance. The great difference between the law of this country on this subject and the law of England, being what is termed the right of primogeniture, which prevails there and not here. By this right the eldest son takes all the land of an intestate. In this country the land is equally divided among all the heirs, and it is the business of the statutes above mentioned to determine who they are, and what proportions they take. These statutes differ somewhat in the different States, but are substantially alike, and may be said to provide, generally, in the following manner:—

**First.** If the deceased leaves children, his real property goes to them, and to the issue of any deceased child by right of representation, in equal shares. The meaning of taking by representation is this: the issue of a deceased child take his or her parent's share only; thus, if a man dies leaving three children living, and had a fourth child who is dead, and who left four children who are living, the property will be divided into four equal parts, one of which each child takes, and the four children of the deceased child divide among them the remaining part, each one of them getting a sixteenth of the whole. By "issue" is meant all lawful lineal descendants.

**Second.** If the intestate leaves no living child, then the property goes to all his other issue or lineal descendants. If all these descendants are of the same degree of kindred to the intestate,—that is, all grandchildren or great-grandchildren,—they share the property among them equally; but if they are in different degrees of kindred,—as, if some were grandchildren and others great-grandchildren, or still further off,—they take by the right of representation; that is, the estate is divided into as many shares as there are grandchildren and deceased children leaving issue, and the great-grandchildren take the share which would have come to their deceased parent.

**Third.** If the intestate leaves no issue, then the real property goes to his father.

**Fourth.** If he leaves neither issue nor father, then it goes in equal shares to his mother, brothers and sisters, and to the children of any deceased brother or sister by a right of representation.

**Fifth.** If he leaves no issue, no father, no brother nor sister, living at his death, and no issue of a deceased brother or sister, then it all goes to his mother. In some States it all goes to his mother, if there be no issue, nor father, nor brother, nor sister of the intestate, and the issue of a deceased brother or sister takes nothing.

**Sixth.** If he leaves no issue, and no father, mother, brother, nor sister, then the estate goes to the next of kin who stand in an equal degree of nearness to him.

**Seventh.** The statutes of descent usually contain various minute provisions for possible circumstances; but of these we do not think it necessary to speak. If the intestate leaves a widow and no kindred, in some States his whole estate goes to his widow; and if the intestate be a married woman and leaves no kindred, her estate goes to her husband.

**Eighth.** If the intestate be a woman, whether married or unmarried, her real estate goes as above stated, excepting that the husband, if a child had been born to them who might have inherited the estate, takes the use, rents, and profits of real estate for his life. He is said in law to hold the estate as a "tenant by the curtesy."

**Ninth.** If the intestate leaves no widow or husband, and no kindred, his or her estate shall escheat (or go) to the Commonwealth.

#### THE DISTRIBUTION OF PERSONAL ESTATE. . .

This is regulated in the several States by what are called the statutes of administration. Generally the real property of an intestate goes at once to those who are heirs by law. The personal property all goes to an administrator upon the estate, and by him is distributed as the law directs. This distribution of personal estate was once a very different thing from the distribution of the real estate; but now it is distributed in much the same way, and is governed by the same rules, as above stated, for the inheritance of real property. The principal differences are these: A widow is entitled to her dower of the real property; that is to say, she has for her life one-third part thereof, and the use, income, or rents thereof. But of the personal estate there is no dower: instead thereof the widow takes in full property one-third part of the personal estate; and if there be no issue, the widow takes generally one-half, and in some States the whole.

If the intestate was a married woman leaving issue, in many of the States her personal property goes to them; in others of the States it goes to her husband, the issue not taking.

If the husband dies leaving a widow and no issue, she takes generally one-half of the personal estate. Of late years the property relations of husband and wife have been much changed in different States; and we refer to our former chapter on the subject of Husband and Wife for a succinct account of them.

---

## CHAPTER IV.

### OF THE DISPOSAL OF PROPERTY BY WILL.

#### SECTION I.

##### OF WILLS.

Few persons are aware how difficult it is to make an unobjectionable will. There is nothing one can do, in reference to which it is more certain that he needs legal advice, and that of a trustworthy kind. Eminent lawyers, not practised in this peculiar branch of the law, have often failed in making their own wills, both in England and in this country; and there are seldom blank forms for wills printed and sold, as there are for deeds and leases. Nevertheless, it may happen that one is called upon to make his own will, or a will for his neighbor, under circumstances which do not admit of delay; or he may have some interest in the will of a deceased person, and questions may have arisen, which some knowledge of legal principles will answer. We shall try to state here what may be of use in such cases; and shall append forms for a will.

Any person of sound mind and proper age may make a will. A married woman cannot, unless in relation to trust property, whereof the trust or marriage settlement reserves to her this power, unless the statute law of her State gives it, which is the case now in many States.

One must be of full age in order to devise real estate. But in most of our States minors may bequeath personal property; and a frequent limitation of the age for such bequest is eighteen years for males, and sixteen years for females.

The testator should say distinctly, in the beginning of the instrument, *that it is his last will*. If he has made other wills, it is

usual and well to say, "hereby revoking all former wills," but the law gives effect to a last will always.

It should close with the words of attestation: "In witness whereof, I have hereunto signed and sealed this instrument, and published and declared the same as and for my last will, at on this                      day of                      ." Then should follow the signature and seal; for this latter, although not always required by law, is usually and properly affixed.

The witnessing part is very material. The requirements in the different States are not precisely alike; but they are all intended to secure such attestation as will leave the fact of the execution of the will, and its publication as such, beyond doubt. In a very few States, it is enough if the signature be proved by credible witnesses, although there be no witnesses who subscribe their names to the will. In many, two subscribing witnesses are enough. But in some it is necessary, *and in all I recommend*, that the testator should ask *three* disinterested persons to witness his will; and should then, in their presence, sign and seal it, and declare it to be his will; and they should then, each in the presence of the testator and of the other witnesses, sign his name as witness.

Each should see the execution which he says he witnesses; and the signing by the witnesses should all be seen by the testator; but the law is satisfied if the thing is done near the testator, and where he can see if he chooses to look. If the testator is too feeble to write his name, let him make his mark; and for this purpose any mark is enough, although a cross is commonly made; or he may sign the will by an attorney or agent whom he duly authorizes to do this. If a witness cannot write his name, he may make his mark; but this should be avoided, if possible.

Over the witnesses' names should be written their attestation; and any alteration in the will should be noticed. If the attestation be in the following words, it will be safe in any part of this country:—

"At                      on this                      day of                      the above-named                      signed and sealed this instrument, and published and declared the same as and for his last will; and we, in his presence and at his request, and in the presence of each other, have hereunto subscribed our names as witnesses."

Witnesses should be selected with care, where that is possible; for if any question arises about the testator's sanity, or any thing of the kind, their evidence is first to be taken, and is very important. But any persons competent to do ordinary acts of business may be witnesses. Nor do the usual disqualifications for business apply.

Thus, married women and minors may be witnesses of wills. But no person should be called upon to witness a will who is a legatee, or an executor, or otherwise interested in the will. If such a person were a witness, it might not avoid the will; but a legatee would lose or be obliged to renounce his legacy; and, generally, it might lead to unintended results. What is said in the next chapter in relation to deeds, of witnesses remembering, &c., or proof of handwriting in case of their death or absence, is true also of wills.

**As to the body of the will, the testator must express his wishes as clearly and accurately as possible; and, unless he has good legal advice, he should make the disposition of his property as simple as possible.**

**The word "bequeath" applies properly to personal estate only; the word "devise" to real estate only. It is safe enough to begin, "I give, bequeath, and devise my estate and property, as follows: that is to say,"—and then go on and tell what shall be done with this and that piece of property or sum of money.**

**Words of inheritance should be added to any devise of land (if not intended for the life of the devisee only), as was said in reference to deeds; although they are not required in wills so peremptorily as in deeds. The words of inheritance are, "and his heirs." These words should follow the name of the devisee, or person to whom the land is devised.**

**If it is intended, as usually is the case, that the will should apply to all the real estate possessed by the testator at the time of his death, although purchased after the will is made, there should be a clause expressing this intention.**

**If children are not provided for in a will, the law presumes in some States that they were forgotten, and gives to any such child the same share as if there were no will, unless the omission is explained in the will or by evidence, in such wise as to show that it was intentional. The same rule applies quite generally to the issue of a deceased child. If the child were provided for in the lifetime of the father, the law, generally, might not presume that he was forgotten; it is best, however, to guard against any question of the kind, by naming the children, and giving them a small sum, or saying that the omission to give them any thing is intentional.**

**A testator should always name his executors; but the will is perfectly good without any executor being named, for the Court of Probate will appoint an "administrator with the will annexed."**



## SECTION II.

## CODICILS.

A codicil is a little additional will. That is, it is a testamentary disposition, not revoking the former will, but varying it in some way, or making changes in it. There can be but one will in force, and that the last; but there may be any number of codicils, all valid. The changes made by a codicil in a will, or in former codicils, should be very distinctly stated; and some words like these should be used: "I hereby expressly confirm my former will, dated \_\_\_\_\_ excepting so far as the disposition of my property is changed by this codicil." And the codicil should be called, at the beginning and in the *in testimonium* clause, a codicil, and be executed and witnessed in the same manner as a will.

If a codicil gives one a legacy, who has already one by the will, the codicil should state whether it gives the second legacy instead of the first, or in addition to it. And if advances are made to a child during life, there should be an indorsement on the will (but a statement in the will or codicil would be better), stating whether these advances are to be charged to him, and if so, in what way, whether with interest, &c.

## SECTION III.

## REVOCATION OF WILLS.

The law concerning the revocation of a will is quite nice and technical. A codicil, we have seen, does not revoke, and a new will does. So might tearing off the name of the testator; but then the question might come, Who tore it off? It is best to leave neither this nor any other question; and therefore to destroy a will which it is intended to revoke. If the will is out of the testator's reach and power, and so cannot be destroyed, it would be best to make a new will, revoking the old one; which any testator can always do.

A will is revoked by the operation of law, if the testator afterwards marry and have a child. If the testator, after this, intends that his will shall take effect, he should expressly confirm it; and the best way to do this would be by making a new will. If he leaves any thing to his wife, and intends that she should have it instead of dower, or of the additional rights which recent statutes in some of the States have given her, he should say so. And then she will not have both, but may choose between the provision of the

law and that of the will, taking whichever she prefers, and leaving the other.

For the rights of the wife or widow in the several States, I refer to the abstract of the statutes of the several States, in the chapter on Married Women.

We will give such forms and rules as will be applicable to all wills, and enable any person to draw a simple will with safety. No one can express accurately provisions for trust estates, remainders, executory devises, &c., without knowing the law on these subjects, and this is an extensive and difficult department of the law. All that is necessary, and may be relied upon as generally sufficient, is as follows:—

## (15.)

## FORM OF A WILL.

I, \_\_\_\_\_ of (*place and occupation*), make this my last will. I give, devise, and bequeath my estate and property, real and personal, as follows, that is to say:—

Then follow all the provisions and disposition of property which the testator intends, stated fully, plainly, and as accurately as possible, paying due regard to the rules and principles already stated on this subject. And if these provisions are carefully presented in distinct and intelligible language, the courts will generally supply whatever of technicality is wanting. Then follows, first, the appointment of an executor, and then the execution of the will, and finally the declaration of the witnesses, thus:—

I appoint (*name, residence, and occupation*) executor (*or executors, if more than one be desired*) of this my will.

In witness whereof, I have signed and sealed and published and declared this instrument as my will, at (*place*), on (*date*).

(*Signature.*) (*Seal.*)

The said \_\_\_\_\_ at said (*place*), on said (*day*), signed and sealed this instrument, and published and declared the same as and for his last will. And we, at his request and in his presence, and in the presence of each other, have hereunto written our names as subscribing witnesses.

(*Here follow the names of three witnesses.*)

A codicil should be written thus:—

I, \_\_\_\_\_ of (*place and occupation*), do make this my codicil, hereby confirming my last will made on the (*date of the will*), and all my former codicils (*if there be any*), so far as this codicil is consistent therewith; and do hereby—

Then follows whatever disposition the testator chooses to make, stating and describing it as he would if it were a will, and executing it and having it attested in the same manner as if it were a will, excepting that instead of calling it a will, wherever that word occurs, he says "codicil" instead of "will."

We add to this two forms of wills, both of which were drawn by skilful lawyers, and disposed of large estates.

## (16.)

BE IT REMEMBERED, That I, \_\_\_\_\_ of the city of \_\_\_\_\_ in the State of \_\_\_\_\_ Esquire, do make this my last will and testament, in manner following. That is to say, —

I order and direct that all my just debts shall be paid with convenient speed.

I give unto Mr. \_\_\_\_\_ of said city, merchant, the amount of moneys due and owing from him to me, according to the tenor and effect of four promissory notes signed by him, viz : one dated October 16, 1819, for ninety-six hundred and eighty dollars ; one dated August 9, 1822, for five thousand dollars; another dated August 9, 1822, for forty-five hundred and fifty-eight  $\frac{88}{100}$  dollars; and another dated August 15, 1822, for fifty-six hundred dollars: and I order said four notes to be cancelled.

To \_\_\_\_\_ the wife of said \_\_\_\_\_ I give an annuity of six hundred dollars, to be paid her in two equal and half-yearly payments of three hundred dollars each.

It is my will, and I order and direct that a trust fund of ten thousand dollars shall be raised out of my estate and invested at interest, the income and produce of which trust fund I give unto \_\_\_\_\_ of \_\_\_\_\_ single woman, to be paid to her half-yearly, during her natural life. And at the decease of the said \_\_\_\_\_ the principal sum or trust fund shall be paid to and among such person and persons in such shares and portions as she, the said \_\_\_\_\_ by any writing by her signed in the presence of two or more credible witnesses, shall give, direct, and appoint. And in default of such appointment, then said trust fund, or principal sum, shall go, as the residue of my estate, to the residuary legatee herein-after named.

I also direct that another trust fund of ten thousand dollars shall be raised out of my estate and invested at interest. And I give the interest and produce of this trust fund, when and as it accrues, unto \_\_\_\_\_ the wife of \_\_\_\_\_

It is my will that the income of this fund, or principal sum shall, during the natural life of said \_\_\_\_\_ either be paid into her proper hand, or upon her order or receipt, signed by her alone, notwithstanding her coverture. And I declare that neither the principal nor income of this fund shall be subject to the control, debts, or engagements of the present or any future husband of said \_\_\_\_\_ the same being intended for her sole and separate use.

At the decease of said \_\_\_\_\_ I give said principal sum or trust fund to the issue of said \_\_\_\_\_ and in default thereof to such

other person or persons as she, by a last will, or any writing in the nature of a last will, shall give, direct, or appoint the same; and in default of such appointment, it is my will that said trust fund or principal sum shall be disposed of and pass as part of the residue of my estate.

I give to \_\_\_\_\_ an annuity of three hundred dollars, to be paid by two equal sums to said \_\_\_\_\_ half-yearly, during her natural life.

To \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ widow, I give an annuity of one hundred dollars, to be paid her, during life, in quarterly payments.

I also give unto \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ widow, an annuity of two hundred dollars, to be paid in quarter-yearly payments during her life.

I order my executor, hereinafter named, to pay \_\_\_\_\_ of \_\_\_\_\_ either in money, or such articles as his comfortable maintenance may require, fifty dollars annually during his life, at such times as said executor shall think proper.

To \_\_\_\_\_ wife of \_\_\_\_\_ of \_\_\_\_\_ I give an annuity of one hundred dollars, to be paid during her life quarterly.

To \_\_\_\_\_ wife of \_\_\_\_\_ of \_\_\_\_\_ I give three hundred dollars, and direct three notes, held by me, signed by her husband, for one hundred dollars each, to be cancelled.

To \_\_\_\_\_ wife of \_\_\_\_\_ of \_\_\_\_\_ there shall be paid in money, or delivered in articles necessary for her support, at the discretion of the executor of this my will, one hundred and fifty dollars annually, during her life, at such time and in such portions as he shall choose.

I give to \_\_\_\_\_ son of \_\_\_\_\_ one thousand dollars, and order that he shall be charged with such amount of moneys as he shall be my debtor for, upon promissory notes, at my decease.

I devise the wood-lot in \_\_\_\_\_ which I bought of one \_\_\_\_\_ to \_\_\_\_\_ wife of \_\_\_\_\_ above named, to hold to her for life, the remainder I give to the child or children of said \_\_\_\_\_ who shall survive her, his, her, or their heirs for ever.

If \_\_\_\_\_ shall be a member of my family at the time of my decease, she shall and may continue to reside in my dwelling-house and participate in the use of the stores and furniture, in common with others of my family, for the term of six months thereafter.

It is my will that a debt of three hundred and thirty-two dollars, due me from \_\_\_\_\_ of \_\_\_\_\_ shall be cancelled.

To each of those of the following named persons, who shall be in my service at the time of my decease, I give one hundred dollars, viz.:

My will is that all annuities hereinbefore given shall take date from the day of the probate of this will; and all legacies, not annuities, shall be paid within eight months from the same period.

It is my will that all the capital or principal sums which shall be requisite to yield the several annuities above mentioned may, by my executor, be paid to \_\_\_\_\_ to be held and managed by said corporation,

as trustees under this will: or, if the said executor and the parties beneficially interested therein shall so elect, said capital or principal sums, or any of them, may be placed in the hands of such trustee or trustees as shall, upon application to the Supreme Court of \_\_\_\_\_ sitting in chancery, be appointed to receive the same, and perform this, my will, in that behalf.

I hereby authorize and empower whoever shall assume the execution of this will, to make sale of, and convey any parcel or parcels of real estate, of which I may die seised, for the purpose of raising any and all such sums of money as shall be required for the trust funds, annuities, and legacies hereinbefore directed to be created, given, and bequeathed. All such sales shall be made by public vendue, after notice thereof shall have been given in two or more newspapers printed in the city of \_\_\_\_\_ for the term of fourteen days at least prior to such sales being made.

All the residue of my estate, real, personal, and mixed, wheresoever it may be found, and of whatsoever it may consist, I give and devise unto \_\_\_\_\_ to hold to him and his heirs for ever.

I hereby revoke all wills by me heretofore made, and constitute the said \_\_\_\_\_ executor of this my last will.

IN WITNESS WHEREOF, I, the above-named testator, have hereunto set my hand and seal, this twenty-sixth day of \_\_\_\_\_ in the year of our Lord eighteen hundred and \_\_\_\_\_

[L. S.]

Then and there signed, sealed, and published by \_\_\_\_\_ the testator, as and for his last will, in the presence of us, who, at his request, in his presence, and in presence of each other, have hereto set our names as witnesses.

(17.)

BE IT REMEMBERED, That I \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_ Esquire, hereby revoking all former wills by me made, do make this my last will and testament, in manner following. That is to say, —

I direct that my just debts be paid with all convenient speed.

To my wife \_\_\_\_\_ I give and bequeath my library; my horses and carriages; my family stores; all my household furniture wherever found, excepting my silver plate; all my pictures; and also the sum of two thousand dollars, which shall be paid to my said wife within sixty days from the probate of this will.

It is my will that the debt due to me from \_\_\_\_\_ and the interest due and to become due thereof, be suffered to remain unpaid, until her marriage or death (whichever event shall first happen), provided she shall, from time to time, so acknowledge said debt, that the same shall not be affected by the lapse of time, or the "Statutes of Limitation;" and provided, also, that she shall consent that the interest accruing on said debt be computed by annual rests.

All the rest, residue, and remainder of my estate, real, personal, and mixed, I give, devise, and bequeath unto \_\_\_\_\_ and \_\_\_\_\_ all

of the city of                      their successors and assigns, and the survivor of  
them, his heirs and assigns, for ever ; but in trust, nevertheless, for the  
performance of this my will concerning the same. That is to say, —

1st. To deliver and transfer to my daughter \_\_\_\_\_ when she shall attain the age of twenty-one years, my tea-set of chased silver, gilt, and my set of gilt teaspoons; and in case my said daughter shall die during her minority, then said tea-set and spoons shall be given to my son \_\_\_\_\_ when he attains majority; but in case of his death before that period, the said tea-set and spoons shall, at the decease of the survivor of them, the said \_\_\_\_\_ and \_\_\_\_\_ be given to the eldest of my other children who shall then be living, and shall attain the age of twenty-one years. But it is my will that my said wife shall be allowed to use said tea-set and spoons until such event shall happen, if she shall so long remain my widow.

2d. To permit my said wife to use all my other silver plate during her widowhood; and on her death or marriage, whichever shall first happen, to divide the same among my children who shall then be living.

3d. To pay over the interest and income which, prior to the fifth day of May that will be in the year eighteen hundred and fifty-six, shall be declared on the seventeen shares in the \_\_\_\_\_ Bank, which now stand in the name of my former wife, \_\_\_\_\_ to \_\_\_\_\_ of \_\_\_\_\_ to be by him appropriated to the support of \_\_\_\_\_ and \_\_\_\_\_ sisters of my said former wife \_\_\_\_\_ in such shares and proportions as he may think expedient. And in case of the decease of said \_\_\_\_\_ then such appropriation shall be made by the trustees acting for the time being under this will; provided, however, that if said trustees shall think it expedient to apply said interest and income towards the support and maintenance of my said daughter \_\_\_\_\_ they shall appropriate the same to that object in preference to the purposes before mentioned.

4th. To transfer and convey said shares on said fifth day of May that will be in the year eighteen hundred and fifty-six, to my said daughter or to her issue in case of her decease. If neither my said daughter nor her issue shall then be living, then said shares shall go to, and be divided among, the heirs of my said former wife, in such shares and proportions as said trustees shall, with the concurrence of said (if living), think expedient and proper; or the same may be transferred to trustees for the benefit of said heirs.

5th. To pay to my said wife \_\_\_\_\_ during such time as she shall remain my widow, the whole interest and produce of the remainder of the trust premises when and as the same accrues and shall be received; and it is my will that my said wife shall apply such portion of said interest and produce as shall be just and proper to the education and the support of my children; and if said interest and income shall not be adequate for the comfortable maintenance of my said wife, and the education and the support of my children as aforesaid, I order and direct the trustees or trustee who shall for the time being be acting under this will, to appropriate such portion of the principal of said remainder of the trust premises to the purposes aforesaid as shall be requisite and necessary. If my wife desires to occupy either of the dwelling-houses of which I may die the owner, I direct said trustees or trustee to permit her to do so.

6th. To each of my sons attaining majority in my wife's lifetime, and requesting a sum of money to enable him to commence business, an advancement not exceeding the sum of six thousand dollars shall be made; and an advance not exceeding the sum of four thousand dollars shall also be made to each of my daughters respectively, on the day of her marriage, having the consent of their mother thereto; which advancements shall be charged to each child receiving the same, and be accounted for in the final distribution of my estate as parts of their shares respectively.

At the death or marriage of my said wife (whichever event shall first happen), the whole principal sum or trust fund, excepting said seventeen shares in the Bank, shall be conveyed, distributed, and paid over to and among my children, or the issue of a deceased child, who shall take by representation its parent's share; provided, however, that the shares to which my daughters shall be respectively entitled shall be so conveyed and passed to a trustee or trustees, to be nominated by my said daughters respectively, and appointed by the judge of probate having jurisdiction over this will, as that the income and produce of such shares or share shall be secured to the sole and separate use of my daughters or daughter during their respective lives; and so also that the capital or principal fund shall, at the decease of my said daughters respectively, go to their respective issue; and in default of such issue to such person or persons, for such estates and interest therein, and in such way and manner as by a last will, or any instrument in the nature of a last will, my said daughters shall respectively give and appoint the same; and in default of such appointment, the same shall go to and be divided between my issue; and in default of issue, to his heirs and assigns for ever. The share of either daughter in a deceased sister's fund to be added to the fund held for the survivors or survivor. In case neither of my children nor their issue shall be living at the marriage or the death of my said wife as aforesaid, then said principal or trust fund (excepting said seventeen shares as aforesaid) shall go to his heirs and assigns for ever.

My lot at shall be and remain a family burial-place for all my lineal descendants and those persons with whom they shall intermarry; and it is my will that no disposition be ever made of said lot which is inconsistent with this provision; which shall apply also to my tomb, No. in the burying-place of

I give and confer to and upon the trustees or trustee acting under this will, full power and authority, by public sale or private contract, in such way and manner, and at such price or prices, as they or he shall deem expedient, to make sale of and convey any and all the real estate of which the trust premises are or shall be composed; and to do all needful acts requisite to convey a title thereto to a purchaser or purchasers; and to invest the proceeds arising from such sale or sales in other real estate or in personal property, with like power of disposition over any and all the real estate in which the trust premises, or any part thereof, shall be invested. And it is my will that said trustees shall not be answerable for any losses or damage to the trust premises, unless the same shall happen by their own wilful default or negligence; nor shall either of them be answerable for the others or other of them, but each for himself only, and then only

for such portion of the premises as shall actually be received by him: and I direct that said trustees shall not be required to give bonds for the faithful execution of the trusts hereby reposed in them.

If by refusal to accept said trusts, by resignation, death, removal, or incapacity to act, the number of trustees shall at any time be reduced to one, it is my will that one or more trustees shall be appointed to fill such vacancy: and I authorize my wife, if living, in conjunction with those of my children who shall have attained majority, to appoint and nominate such new trustees or trustee, with the concurrence of the judge of probate for the time being having jurisdiction over this will; and in case of their neglect or refusal so to do, I refer the appointment to said judge of probate, or to the Supreme Judicial Court sitting in chancery; and such new trustees or trustee shall have and possess all and the like interest, power, and direction in and over the trust premises, as if he or they had been originally named and appointed in and by this instrument (except the exemption from giving bonds for the due execution of said trusts).

I appoint the said \_\_\_\_\_ and my wife \_\_\_\_\_ guardians to each of my children during their minority; and I direct that neither be required to give bonds for their fidelity as such guardians.

I constitute and appoint the said \_\_\_\_\_ the executor of this will, which shall operate upon all real estate of which at the time of my decease I shall be owner.

IN WITNESS WHEREOF, I, the said \_\_\_\_\_ have hereunto set my hand and seal, this second day of January, in the year eighteen hundred and forty-seven.

(Name.) (Seal.)

Then and there signed, sealed, published, and declared by the said \_\_\_\_\_ as and for his last will and testament, in presence of us who, at his request, in his presence, and in presence of each other, have hereto subscribed our names as witnesses.

#### SECTION IV.

##### EXECUTORS AND ADMINISTRATORS.

**An executor is a person named in the will of a deceased person, to settle his or her estate. There may be one or more; and they may be male or female. An administrator is one appointed by the court to settle the estate of a deceased person. If the deceased left a will, but did not appoint an executor, or the appointed executor refuses to act, or resigns, or dies, or for any reason fails to act, an administrator is appointed by the court, "with the will annexed." The husband of a deceased wife, or the wife of a deceased husband, has generally the right to be appointed administrator; after them the next of kin, in the order of relationship. But the courts have some discretion in the matter.**



If a testator wishes that his executor, or that trustees whom he appoints by his will, should not give bonds, he should say so, in some such words as these: "I desire and direct that neither my executor nor my trustees herein named should be required to give bonds." Then other trustees appointed by the court do give bonds.

Executors and administrators act as the personal representatives of the deceased, having in their hands his means, for the purpose of discharging his liabilities, or executing his contracts, and of carrying into effect his will, if he have left one; and in general they are liable only so far as these means (called *assets*) in their hands are applicable to such a purpose. But they may become personally liable; and a clause in the statute of frauds (which see) refers to this subject, making them not liable to pay any debt out of their own means, unless they give a promise to that effect, in writing, signed by them.

In this country the judicial officer or judge who has the charge of the settlement of estates, of the proof of wills, and of proceedings under them, is generally called the judge of probate. But in some States he is called surrogate, ordinary, register or registrar of wills or of probate, judge of the Orphan's Court, &c. His powers and duties are very similar all over the country. From his decrees or decisions an appeal may generally be taken, by a party who thinks himself aggrieved, to the Supreme Judicial Court. The judge of probate is usually a county officer, and his jurisdiction is then limited to his county.

If an executor or administrator receives, as such, a promissory note or bill of the deceased, and indorses the same with his name, without adding "executor" or "administrator," he is liable upon it personally. If he makes a note or bill, signing it "as executor," he is personally liable, unless he expressly limits his promise to pay by the words, "out of the assets of my testator," or, "if the assets be sufficient," or in some equivalent way; but a note or bill so qualified would not be negotiable, because on condition. If an executor or administrator submits a disputed question to arbitration in general terms, and without an express limitation of his liability, and the arbitrators award that he shall pay a certain sum, he is liable to pay it whether he has assets or not. But if the award be merely that a certain sum is due from the estate of the deceased, without saying that the executor or administrator is to pay it, he is not precluded from denying that he has assets.

Where the will of the deceased is of an executory nature, and the personal representative can fairly and sufficiently execute all that the deceased could have done, he may do so, and enforce the contract. But where an executory contract is of a strictly personal

nature,—as, for example, with an author for a specified work, or with an artist for a painting,—the death of the writer before his book is completed, or of the artist before the painting is finished, absolutely determines the contract, unless what remains to be done—as, for example, in the case of a book, the preparing of an index, or table of contents, &c.—can certainly be done as well, and to the same purpose and effect, by another.

If executors or administrators pay away money of the deceased by mistake, or enter into contracts for carrying on his business for the benefit of his personal estate, and to wind up his affairs, they may sue on such contracts either in their individual or their representative capacities; but they should sue in the latter capacity, in order to avoid a set-off against them of their individual debts.

The title of an administrator does not exist until the grant of administration. Then it goes back to the death of the deceased; but only in order to protect the estate, and not for any other purpose. And if an agent sells goods of the deceased after his death and in ignorance of his decease, the administrator may adopt the contract, and sue upon it for the price of the goods.

On the death of one of several executors, either before or after probate, the entire right of representation survives to the others. But if an administrator dies, or a sole executor dies, no interest and no right of representation is transmitted to his personal representatives.

An executor derives his authority from the will, and his duties begin at the death of the testator. They may be stated thus:—

1. He should cause the deceased to be buried in a suitable manner.

2. He should offer the will for probate as soon as he can with a reasonable regard to his convenience; and in proving the will, filing bonds, giving notice, making and returning an inventory, and the like, he must conform to the law of the State and the rules of the probate; and he will obtain at the office sufficient information on all these points.

3. He must collect the property, and, after paying the debts, he must distribute or dispose of the remainder as the will directs.

4. He must render his account from time to time, until a final settlement of the estate is made, and will be directed at the probate office when and how to file his accounts.

An administrator derives his authority from the court. But his duties are then substantially similar to those of an executor, excepting that he must distribute and dispose of the estate as the law requires, as he has no will to direct him unless he is an administrator with the will annexed. The debts must be paid in a certain

order. This is not precisely the same in all the States; but it is very generally as follows: 1. Funeral expenses, charges of the last sickness, and probate charges; 2. Debts due to the United States; 3. Debts due to the State in which the deceased had his home; 4. Any liens attaching to the property by law; 5. To creditors generally.

If the estate is insufficient to pay all the debts due from it, as soon as the executor or administrator finds this to be the case, he should represent the estate as insolvent at the Probate Court, and thereafter follow the requirements of the law of the State and the rules of the Probate Office in reference to insolvent estates of deceased persons.

In most of the States all the necessary forms or instruments are given to applicants at the Probate Office. It may, however, be convenient to know how to frame some of the most necessary forms; and I give below those which, with such obvious changes as circumstances require and indicate, may be found sufficient.

#### FORMS ANNEXED TO THIS SECTION.

- (17 a.) Petition to be appointed executor without further notice.
- (17 b.) Executor's bond.
- (17 c.) Bond of executor, who is also residuary legatee.
- (17 d.) Administrator's bond.
- (17 e.) Administrator's petition for leave to sell a part of the real estate.
- (17 f.) Bond of administrator licensed to sell real estate.
- (17 g.) Account of executor.

#### (17 a.)

#### PETITION TO BE APPOINTED EXECUTOR WITHOUT FURTHER NOTICE.

*To the Honorable the Judge of the Probate Court in and for the County of*

RESPECTFULLY REPRESENTS (*name of the executor*), of (*residence of executor*), that (*name of testator*), who last dwelt in (*residence of testator*), died on the            day of            in the year of our Lord one thousand eight hundred and            possessed of goods and estate remaining to be administered, leaving a widow, whose name is (*name of the widow*), and as his only heirs-at-law and next of kin, the persons whose names, residences, and relationship to the deceased are as follows, viz.: (*here give all the names, stating the relationship of each person*). That said deceased left a will and a codicil, herewith presented, wherein your petitioner is named executor.

Wherefore your petitioner prays that said will and codicil may be proved and allowed, and letters testamentary issued to him.

Dated this                      day of                      A.D. 186

(*Signature of executor.*)

The undersigned, being all the heirs-at-law and next of kin, and the only parties interested in the foregoing petition, request that the prayer thereof be granted without further notice.

(*Signatures of heirs.*)

[Minors must be so designated, and the names of their guardians given, if they have any. If any party is a married woman, her husband's name must be given.]

(17 b.)

#### EXECUTOR'S BOND.

KNOW ALL MEN BY THESE PRESENTS, That we (*name of the executor*), as principal, and (*names of his sureties*), as sureties, and all within the Commonwealth (*or State*) of                      are holden and stand firmly bound and obliged unto                      judge of the Probate Court in and for the county of                      in the full and just sum of                      dollars, to be paid to said judge and his successors in said office; to the true payment whereof we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals. Dated the                      day of                      in the year of our Lord one thousand eight hundred and sixty-

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden (*name of the executor*), executor of the last will and testament of (*name of the testator*), late of (*residence of testator*), deceased, testate, shall, —

*First*, Make and return to the Probate Court for said county of within three months from his appointment, a true inventory of all the real estate and all the goods, chattels, rights, and credits of said testator, which are by law to be administered, and which shall have come to his possession or knowledge;

*Second*, Administer according to law and the will of said testator all the goods, chattels, rights, and credits, and the proceeds of all the real estate that may be sold for the payment of debts or legacies, which shall come to the possession of said executor, or of any other person for him; and,

*Third*, Render upon oath a just and true account of his administration within one year, and at any other times when required by said court: then this obligation to be void; otherwise to remain in full force and virtue.

(*Signature of executor.*) (*Seal.*)

(*Signature of surety.*) (*Seal.*)

(*Signature of surety.*) (*Seal.*)

Signed, sealed; and delivered in presence of

ss.

186      Examined and approved.

(*Name of judge.*)

*Judge of Probate Court.*

(17 c.)

## BOND OF EXECUTOR, WHO IS ALSO RESIDUARY LEGATEE.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of the executor*), in the Commonwealth (*or State*) of \* am holden and stand firmly bound and obliged unto Judge of the Probate Court in and for the county of in the full and just sum of dollars, to be paid to said judge and his successors in said office; to the true payment whereof I bind myself and my heirs, executors, and administrators, by these presents. Sealed with my seal. Dated the day of in the year of our Lord one thousand eight hundred and sixty-

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden (*name of executor*), executor of the last will and testament of (*name of testator*), late of (*residence of testator*), deceased, testate, being residuary legatee in said will, shall pay all debts and legacies of said testator, and such sums as may be allowed by said Probate Court for necessities to the widow or minor children of said testator, then this obligation to be void, otherwise to remain in full force and virtue.

(Signature.) (Seal.)

Signed, sealed, and delivered in the presence of

ss. 186 Examined and approved.  
(Name of judge.)  
Judge of Probate Court.

(17 d.)

## ADMINISTRATOR'S BOND.

KNOW ALL MEN BY THESE PRESENTS, That we (*name of administrator*), as principal, and (*name of sureties*), as sureties, and all within the State of are holden and stand firmly bound and obliged unto judge of the Probate Court in and for the county of in the full and just sum of dollars, to be paid to said judge and his successors in said office; to the true payment thereof we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and sixty-

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden (*name of administrator*), administrator of the estate of (*name of deceased*), late of (*residence of deceased*), deceased, intestate, shall, —

\* If sureties are required, they should be added here, as in preceding Form.

*First*, Make and return into said Probate Court, within three months after his appointment, a true inventory of all the real estate, and all the goods, chattels, rights, and credits of said deceased, which have or shall come to his possession or knowledge;

*Second*, Administer according to law all the goods, chattels, rights, and credits of said deceased, and the proceeds of all his real estate that may be sold for the payment of his debts, which shall at any time come to the possession of said administrator, or of any other person for him;

*Third*, Render upon oath a true account of his administration, within one year, and at any other times when required by said court;

*Fourth*, Pay any balance remaining in his hands, upon the settlement of his accounts, to such persons as said court shall direct; and

*Fifth*, Deliver the letters of administration into said court, in case any will of said deceased is hereafter duly proved and allowed: then this obligation to be void; otherwise to remain in full force and virtue.

(Signature of administrator.) (Seal.)

(Signature of surety.) (Seal.)

(Signature of surety.) (Seal.)

Signed, sealed, and delivered in presence of

ss.

186 Examined and approved.

(Name of judge.)

Judge of Probate Court.

(17 e.)

#### ADMINISTRATOR'S PETITION FOR LEAVE TO SELL A PART OF THE REAL ESTATE.

*To the Honorable the Judge of the Probate Court in and for the County of*

RESPECTFULLY REPRESENTS (*name of the administrator*), as he is administrator of the estate of (*name of the deceased*), late of (*residence of the deceased*), in said county, deceased. That the debts due from the deceased, as nearly as they can

now be ascertained, amount to . . . . . \$  
And the charges on administration to . . . . .

Amounting in all to . . . . . \$  
That the value of the personal estate in the hands of the petitioner (exclusive of the widow's allowance) is . . . . \$

And that the personal estate is therefore insufficient to pay the debts of the deceased and the charges of administration, by the sum of . . . . . \$

Wherefore your petitioner prays that he may be licensed to sell so

much of the real estate of said deceased as will raise the last-mentioned sum, for the payment of said debts and charges of administration.

Dated the                      day of                      A.D. 186

(Signature.)

The undersigned, being all persons interested, hereby assent to the sale, as prayed for in the foregoing petition.

(Here should follow the signatures of the widow and all the heirs.)

[If the petitioner wishes the court for special reasons to direct what *specific part* of the real estate shall be sold, he must set forth the value, description, and condition of the estate, or of such part as he proposes to sell. Or he may say that a partial sale would injure the estate, and ask a license to sell the whole.]

(17f.)

#### BOND OF ADMINISTRATOR LICENSED TO SELL REAL ESTATE.

KNOW ALL MEN BY THESE PRESENTS, That we (*name of person licensed*), as principal, and (*names of his sureties*), as sureties, and all within the State of                      are holden and stand firmly bound and obliged unto Esquire, judge of the Probate Court in and for the county of                      in the full and just sum of                      dollars, to be paid to said judge, and his successors in said office; to the true payment whereof we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals. Dated the                      day of                      in the year of our Lord one thousand eight hundred and sixty-

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above-bounden (*name of the person licensed*), administrator of the estate of (*name of deceased*), late of (*residence of deceased*), deceased, who has been licensed by said court to sell real estate of said deceased, more than is necessary for the payments of debts,                      and charges of administration, shall account for and dispose of according to law all proceeds of the sale remaining after payment of debts,                      and charges: then this obligation to be void; otherwise to remain in full force and virtue.

(Signature of administrator.) (Seal.)

(Signature of surety.) (Seal.)

(Signature of surety.) (Seal.)

Signed, sealed, and delivered in presence of

ss.

A.D. 186. Examined and approved.

(Name of judge.)

Judge of Probate Court.

I (*name of administrator*), do solemnly swear, that in disposing of the real estate of (*name of the deceased*), deceased, which I have been licensed by the Probate Court to sell, I will use my best judgment in fixing on the time and place of sale, and will exert my utmost endeavors to dispose

of the same, in such manner as will be most for the advantage of all persons interested therein. So help me God.

(Signature of administrator.)

ss. 186 Personally appeared the  
above-named and took and subscribed the above oath.

Before me,

Justice of the Peace.

(17 g.)

#### ACCOUNT OF EXECUTOR.

The first (or second or other, as the case may be) account of (name of executor), executor of the last will and testament of (name of the testator), late of (residence of the testator), in the county of deceased.

Said accountant charges himself with the several amounts received, as stated in Schedule A, herewith exhibited . . \$  
And asks to be allowed for sundry payments and charges, as stated in Schedule B, herewith exhibited . . . . .

Balance . . . . . \$

(Signature.) Executor.

The undersigned, being all the parties interested, having examined the foregoing account, request that the same may be allowed without further notice.

(Signatures of the widow and all the heirs and legatees.)

(Then follow the schedules.)

## CHAPTER V.

### DEEDS OF LAND.

#### SECTION I.

##### WHAT IS ESSENTIAL TO DEEDS CONVEYING LAND.

By the statutes and usage of this country, generally, no lands can be transferred excepting by a deed, which is signed, sealed, acknowledged, and delivered; and it should always be recorded.

By the old law, no instrument was considered made until it was sealed; then it was thought to be *done*, and the word *deed*,



which literally means only something done, was given to every written instrument to which a seal was affixed; and that is the legal meaning now. But the common meaning of the word is an instrument for the sale of lands; and it is of this that we would now treat.

What the deed should be, that is, in what words it should be expressed, we can best show by the forms appended to this chapter, and do not propose to say more about it than this. It is not safe to depart from forms and established phrases, which have passed before the courts so often that their exact meaning is certainly known. There are things which seem to be and perhaps are vain repetitions; and for the usual words it may be thought that others of the same or better meaning may be substituted. Such changes may be made, *perhaps*, without detriment; but *perhaps*, also, with ruinous results; and it is not wise to run the risk.

It should be signed; and this means, properly, that the seller or grantor should write his name in the usual way, in the proper place, and with ink: If the grantor cannot write his name, he may merely make his mark. It has been said that writing with a lead-pencil is enough, but it would not be safe to trust to it. The name of the grantee should be distinctly written in the proper place, in ink. Sometimes, in our large cities, an agent buys land for a principal who does not wish to be known, and the agent's name is inserted as grantee, *in pencil*, and the deed is so executed and acknowledged and delivered; and some time afterwards the agent rubs his name out, and writes the name of his principal, the actual buyer, instead. But this is a very unsafe and reprehensible practice, and the deed cannot be considered satisfactory.

The deed of a corporation must be signed by an agent or attorney, who should be careful to execute it in the manner indicated in some of the forms appended. In one case, in Massachusetts, where a deed was written throughout as the deed of a corporation, and their treasurer signed it thus: "In witness whereof, I, the said C C, in behalf of the said company, and as their treasurer, have hereunto set *my hand and seal*,"—it was held that this was the deed of the treasurer, and not the deed of the corporation, and did not transfer the lands. This is an extreme case, and the law might not always be applied with so much severity; but it is best not to incur any such risk. So, too, the rule that a person who is to be authorized to affix the seal of another should be authorized under the seal of the principal, is so general, that, although it has important exceptions, it should always be observed.

The seal is properly a piece of paper wafered on, or sealing-wax pressed on. In the New England States generally, and in New

York, nothing else satisfies the legal requirement of a seal. In the Southern and Western States generally, a scrawl, intended for a seal, usually made by writing the word "seal" within a square or diamond, is regarded in law as a seal. If there be but one seal on an instrument, and many parties, all of whom should seal it, this seal will be taken generally for the seal of each one; although, properly, each signer should put a seal against his own name.

**The deed should be delivered.** If a man makes a deed, and acknowledges it, and keeps it in his possession, and dies, the deed has no effect whatever; no more than if the grantor had put it in the fire. Even where it was recorded, and then taken back by the grantor and kept by him, with words going to show that the grantor did not wish the grantee to know of it, it was held not to have been delivered. But there are no especial words or form necessary for delivery. If the deed, in any way whatever, gets into the possession of the grantee, with the knowledge and consent of the grantor, it is a delivery.

**The grantor may deliver it by his agent, and it may be delivered to the agent of the grantee, authorized by him to receive it.** Moreover, the law permits a kind of conditional delivery. Thus, the grantor may deliver the deed to a third person, to be delivered by him to the grantee on a certain condition, or when a certain thing is done; and when that condition is performed, or the thing is done, the deed belongs to the grantee, and takes effect in the same way as if it had been delivered to him personally. In legal language, the deed is said to be delivered to the third person, as an *escrow*.

**So the grantor may put the deed in the hands of the third person, with directions to give it to the grantee after the death of the grantor, provided the grantor does not reclaim it in the mean time.** Then the grantor can reclaim it whenever he will, which he cannot do after he has delivered it to the grantee; but if he does not reclaim it during his life, at his death it becomes the property of the grantee, and the law now considers that it was delivered to him when first delivered to that third party. So that deed is good even against creditors, provided that the grantor was perfectly solvent when he put the deed in the hands of the third party, and acted altogether in good faith.

**If a deed to a married woman be delivered either to her or to her husband, it is sufficient.**

**As there must be delivery to the grantee, or to some one for him, so there must be assent and acceptance on his part.** The law will help any evidence tending to show such assent, by presuming in favor of the grantee's assent if the deed be wholly and only favor-

able to him. But not if there is money to be paid by him, or any thing important to be done by him if he accept the deed.

**It is usual and proper that the execution of the deed should be attested by witnesses.** In many of our States two witnesses are required by statute. In New York one is enough. In the greater number, witnesses are not absolutely required by statutes, nor by strict law of any kind; but even there it is usual and safer to have them.

**The witness should see the party sign; but if the deed is signed near him, and is immediately brought to him by the grantor, who tells him that is his signature, and asks him to witness, this would be sufficient in law.**

**It is desirable that witnesses, when called on to testify, should remember the signature, sealing, &c.; but it is sufficient in law that they are certain of their handwriting, and can declare under oath that they should not have attested the execution and delivery if they had not seen it.** If witnesses are dead, or inaccessible, proof of their handwriting is sufficient; and if this cannot be offered, then proof of the handwriting of the grantor is enough. If witnesses attest the signing, sealing, and delivery, in the common form, proof of their handwriting, in case of their death or absence, is proof of the execution and delivery of the deed.

**The witness should, properly, be of sufficient age and understanding, but may be a minor.** He should have no interest in the deed. Hence a wife is not a proper witness of a deed to her husband. But the courts, and especially a court of equity, would seldom permit a deed to be avoided through the incompetency of a witness, if there were no suspicion of wrong.

**Generally a deed is valid as between the parties, although not acknowledged; but, to entitle it to be recorded, it must be acknowledged.** For this purpose the grantor must go before a person qualified by law to receive acknowledgments, and exhibit the deed to him, and acknowledge it as his free act and deed; and the person receiving the acknowledgment then certifies that he has received this acknowledgment, under the proper date.

**In general, an acknowledgment may be made before any justice of the peace, or a commissioner appointed for the State in which the land to be conveyed is situated, if the deed is executed in another State, or any consul or consular agent of the United States if the deed is executed in a foreign country.** This acknowledgment must be made, or the deed cannot be recorded. And the deed is invalid, as notice, if the acknowledgment is defective, although it is actually recorded.

Formerly, all the grantors acknowledged the deed; and this continues to be usual in most places, and is the safest practice. But, in some places, it is now sufficient in law if either of the grantors acknowledge it.

In many States, if a wife, separately or joining with her husband, conveys away her land, a particular form and mode of acknowledgment, and a separate examination of the wife are required, in order to ascertain that she does it of her own free will; and any such directions or requirements should be followed with great care. The forms added to this chapter will show how this is done.

An attorney, A B, who executes a deed for another, C D, should acknowledge it as "the free act and deed of the said C D," and not as his own.

The justice taking the acknowledgment must be careful to state it in his certificate, exactly as it was made before him.

In some of our States recent laws have in effect required the assent of the wife to a transfer of the husband's real estate; not merely to convey her dower, but to pass the property to the grantee. We do not enumerate or specify these States here, having given previously an abstract of the law of husband and wife in all the States.

In all our States we have the excellent system of registering (or recording, as it is more frequently called) all deeds of land in the public registers of the county in which the land lies. This was adopted for the purpose of giving certainty and notoriety to title, and it works admirably well. The investigation of title is usually easy to those accustomed to this mode; and every purchaser of land should ascertain that the deed will give him good title before he takes it.

The law generally requires that a deed of lands should be acknowledged and recorded, to have full effect; but judicial decisions have everywhere qualified the force of these words, and in some instances the language of the statutes varies. But the rules of law in reference to the recording are quite uniform in all the States, and are as follows:—

In the first place, every acknowledged deed is considered as recorded as soon as it is in the hands of the recording officer; and therefore he generally minutes upon it the day, hour, and minute when it was received by him. This may be very important; for if A makes his deed and delivers it to B, who presents it for record at five minutes past noon, and C, a creditor of A, attaches the same estate at four minutes past noon of the same day, the grantee loses the land and the creditor gets it; but the grantee saves it, if he presents it to the office three minutes and fifty seconds after noon.

In the next place, as the purpose of public registration is general notoriety, a deed is perfectly good without record against the grantor himself and his heirs, because the grantor himself could not but know of the deed, and, as all title passed out of him by it, his heirs could take none from him.

And, finally, a deed not recorded is just as good as if it had been recorded against any parties, or the heirs of any parties, who took the land from the grantor by a subsequent deed, even for a full price, if they had at the time notice or knowledge of the prior and unrecorded deed. Many wise persons have doubted the expediency of this last rule, because it tends to raise troublesome questions, and to make grantees careless about recording their deeds. But the rule itself is universally and firmly established, and in some statutes requiring record this exception is expressed.

A deed should be dated; but if it have no date, it will take effect from delivery. Any erasures or alterations should be noticed and stated above the names of the witnesses, as having been made before the execution of the instrument. Any material alteration by a grantee, or by his procurement, makes the deed void in most cases, so far as he is concerned.

It is usual, and therefore proper, to name executors, administrators, &c., as in the forms appended; but, generally, the rights and obligations of the deceased fall by law on their legal representatives.

## SECTION II.

### THE USUAL CLAUSES IN DEEDS.

It is customary to recite in all deeds the consideration on which they are made. This is usually the price paid for them. Sometimes it is this price in part, and other things in part. Sometimes there is no price paid, the land being either a gift, or conveyed for other considerations. In the great majority of deeds, the language used is, "In consideration of (*so much money*), paid me by the said (*grantee*), the receipt whereof I acknowledge." Or it is, "In consideration of one dollar paid me, the receipt of which I acknowledge, and divers other considerations;" or, "In consideration of one dollar to me paid, the receipt of which I acknowledge, and of the love and good-will I bear to the said (*grantee*)."  
It is always customary, although not necessary, to put in "one dollar," or some other nominal sum, although no price is paid.

Although the price is inserted, and the receipt thereof be acknowledged, the seller is not bound by his receipt. It is a general

rule, as has been stated, that all written receipts of money are open to evidence, although written contracts generally are not. Under this rule, the seller may sue for the whole or any part of the money of which he has acknowledged the receipt, if he can prove that the money he demands has not been paid to him. He cannot, however, say that the money has not been paid, and *therefore the deed is void*, and the land has not passed to the grantee. For only that part of the deed which is a receipt is open to denial or evidence.

Of the words of conveyance, which are usually "give, grant, sell, and convey," it needs only be said that it is best to use them, *because* it is usual, but that other words, or these with some change, might be sufficient in law.

The description of the land should be minute and accurate, to an extreme degree. In this country it is customary and well to refer to the previous deeds by which the grantor obtained his title. This is done by describing them by their parties, date, and book and page of registry. It may be well to remark that a deed referred to in a deed becomes, for most purposes in law, a part of the deed referring.

By the law of England and of America, if land is conveyed by deed to "A B," the grantee takes it for his life only. Nor will he take it in full property (or, to use the technical law-term, in fee-simple), that is, with full power of disposing of it during his life or at his death, with a right on the part of his heirs to it if he does not dispose of it, unless it is given to "A B and his heirs." These last words, which are commonly called words of inheritance, must always be added; for although there are some qualifications to this rule, which might help those who take such a deed inadvertently, there are none to which it would be safe to trust.

The deed is terminated by this clause of execution: "In witness whereof, I, the said A B, on the — day of — in the year —, have hereunto set my hand and seal," or "subscribed (or written) my name and affixed my seal." And there should be no departure from this, although an exact adherence to this formula may not be necessary to the validity of the deed. This clause is often called the "*in testimonium* clause."

If the deed contains nothing but what has now been said, it will convey the land, or all the right, title, and interest in and to the land, possessed by the grantor. But it is only what is called a *quitclaim deed*. That is, it is *not a warranty deed*. These phrases, which are in common use, explain themselves. Originally, a quitclaim deed was intended, and, indeed, operated only where the grantee already held possession of the land, or some title to it, and the grantor

intended to renounce all his right or title in favor of the grantee. But it was soon used where a man intended to sell and convey land, but not to give any warranty. And now, because there is some question, in some of our States, as to the effect of the words "give, grant, sell, and convey," although there be no express warranty in the deed, it is usual, and it is best, when only a quitclaim is intended, without any warranty whatever, to substitute for the words of conveyance above mentioned the words "grant and quitclaim," or, more accurately, "release and quitclaim." Then, if the grantee afterwards loses the land because the grantor had no title to it, the grantor is nevertheless under no responsibility, provided the transaction was an honest one on his part.

All purchasers, therefore, desire to have a warranty deed, if they can get one. And a deed becomes a warranty deed when clauses like those which follow are inserted just before the clause of execution:—

"And I, the said A B (the grantor), for myself, my heirs, executors, and administrators, do covenant with the said C D (the grantee), his heirs and assigns, that I am lawfully seised in fee of the aforegranted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C D as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said C D, his heirs and assigns, for ever, against the lawful claims and demands of all persons."

It will be noticed that this paragraph contains four different agreements or warranties,—covenants, the law calls them. The cases are multitudinous, and the law excessively nice as to their exact meaning and operation. None of this technical learning is it worth while to spread before the general reader. But the general purpose and effect of all of them together should be stated. It is, that if "the said C D," that is, the grantee, or his heirs or assigns, are turned out of that estate (ousted or evicted, the law says), on the ground that the grantor had no title, or an incumbered title, and could not convey any good and clear title, he or they may fall back on the grantor or his heirs, and demand damages for the loss of the land.

It is a question how much damage a grantee thus ousted shall recover. In most of our States, it seems to be the money paid for it, with interest (deducting rents and profits), and the legal costs and charges (not including counsel fees) for defending against the suit which has ousted him from the land, and no more. But in other States, as generally in New England, the party ousted recovers the actual value of the land, with his improvements, which he loses

by the defect of the grantor's title, although this may be much more than he paid for it. It is not, however, settled uniformly what the measure of damages is.

**In forms of deeds there is usually a blank of a few lines left after the word "incumbrances," and this is intended for the insertion of any mortgage, or other incumbrance, which may exist; thus, "excepting a mortgage to, &c., dated, &c., to secure the sum of," &c. Or, "excepting a right in the owners of the adjoining land to have and maintain a drain running," &c.**

**Sometimes quitclaim deeds are made with this warranty: "And I will, and my heirs, &c., shall, warrant and defend, &c., to the said C D, &c., against all claims and demands of myself, or of any persons deriving title by or through me." Such a warranty will hold the grantor and his heirs liable for any incumbrance made or suffered by him, but not for any other.**

**As the usual covenants of a warranty deed are made with the grantee, "his heirs and assigns," if such grantee conveys the land only by grant and quitclaim, without warranty, his grantee takes the benefit of all the previous warranties to which this last grantor was entitled. Thus, A sells with warranty to B; B grants and quitclaims to C; C is ousted by D, who proves that he has a better title than A. C cannot sue B, because he got no warranty from B; but he can sue A on A's warranty to B, which was transferred to C.**

**Sometimes estates are conveyed on condition; but this is a very catching thing, and nobody should ever take such a deed, if he can help it. It is hardly safe to have the word *condition* in any deed but a mortgage. The reason is, that if an estate is conveyed on condition, and the condition is broken, the estate is lost. Thus, if land is sold on a certain street with this clause: "And the land aforesaid is sold on condition that neither the grantee, nor any one deriving title from or through him, shall build within ten feet of the street." If any owner build six inches over the line, by mistake, or extend his building by an addition of a foot or so in any part, the whole land, house and all, *might* be lost and forfeited to the grantor. And the grantor can always secure the proper effect of such a condition by a clause like this: "Provided, however, and it is agreed, that if the said C D, &c., shall build, &c., the said A B, or his heirs or assigns, may enter upon the land hereby conveyed, and abate and remove any and all buildings or parts of buildings which stand nearer said street than the limit of ten feet aforesaid;"—or some similar clause, as might be framed to suit the case. This would be just as good for the grantor, and a great deal safer for the grantee.**



By a rule of law which originated in this country, and is now universal here, if a married woman holds lands, the husband and the wife, joining in one deed, may convey them. In some of our States such a deed is regulated by statutes, which, of course, are to be followed. And in many of them the wife now has peculiar powers by statute, as stated in the chapter on Married Women. It may be necessary that she should renounce or release certain rights, as of homestead, &c., under these statutes, if it is intended that the grantee should take a clear title; and in such case proper words should be inserted. This is now the custom, for example, in Massachusetts. She should always release her right of dower, unless it is intended that she should preserve it. In some States her signing the deed with her husband does not release any thing, even if it could be proved that such was her intention, unless the deed contain words expressing her intention to release or convey such or such a right or interest. In most printed forms there is a blank left to be filled up for this purpose. As this differs in different States, I shall refer to it again.

It may be well to remark that bargains are often made for the purchase and sale of real property. If the contract be oral only, it has no force in any court. If it be in writing, either party may, in a court of law, recover damages from the other if he refuses to perform his contract. Or, in a court of equity, he may compel the other to execute his contract. Not, however, if there was fraud in the contract, or oppression, or gross misrepresentation, or intentional and important concealment. But a mere inadequacy of price — all things being honest — will not prevent a court of equity from enforcing such an agreement.

Deeds conveying land are of vast variety. They not only differ, that they may suit the particular purposes of the parties and the terms of their bargain, but those used in each section of the country differ somewhat in form from those used in another; and different conveyancers in the same State prefer one form to another. But these differences are generally, if not always, differences only of form, and are seldom essential to the meaning and effect of the deeds. I give here forms of all the kinds most in use; and in such variety, and so selected and prepared, that it is believed that any person in any part of this country will be able to find a form which, either as it stands, or with such alterations as can be readily seen to be required by the use he would make of it, will be safe and sufficient for his purpose.

As acknowledgments differ much in form, enough of them are given to show the kinds that are used. The fuller and more par-

•

ticular are the safer, although the shorter and more general might be sufficient.

In New England, a deed of land is usually what is called in law a deed-poll; by which is meant a deed of one party, and from him to another. In the other States generally a deed of lands is more commonly in the form of an indenture, which is an instrument *between two or more parties*. The difference between them will be seen in the forms given. The first one is a deed-poll. But most of them are indentures, as they are most frequently used; although a deed-poll that was satisfactory in other respects would generally suffice to give good title to land anywhere.

A form of a deed-poll may be converted into an indenture by changing the beginning of it in the manner shown in the forms, and, whenever the word "grantor" comes, changing that into "the party of the first part." And a deed by indenture is made a deed-poll by changes of an opposite kind. How to make these changes will be seen by comparing the deeds of the two kinds as herein given.

Another difference between the deeds-poll in common use in the New England States, and the deeds by indenture in use elsewhere, must be noticed. If the grantor by a deed-poll has a wife, and it is intended that she shall relinquish her dower, she is not mentioned as grantor, but in the *in testimonium*, so called, which is that part of the deed which begins with "In witness (or in testimony) whereof;" in this her name is mentioned, and it must be distinctly said that she signs the deed in token of her relinquishment or release of dower. This is shown in the first of the forms annexed to this chapter. But where deeds by indenture are used, there she is joined with her husband, and named as grantor, he and she being "parties of the first part." It is, however, *not* necessary that any thing should be said in the deed about her release of dower or homestead; but she signs and seals the deed, and, in the acknowledgment, express mention is to be made of her release of dower and homestead, and also that she was separately examined. Some of the forms are drawn in this way. Other forms are written as if the grantor was unmarried, or as if his wife, if he had one, did not intend to give up her dower. But all these forms can be readily altered, and made to resemble either of the forms accordingly as there is or is not a wife, or as, if there be a wife, it is intended that she should join in the conveyance and relinquish her dower, or that the husband should convey subject to the wife's dower. If this last be the intention, it is not necessary to say so, as the mere fact that she is not a party to the deed preserves for her her right of dower.

## SECTION III.

## MORTGAGES OF LAND.

The purpose of a mortgage is to give to a creditor the security of property. It is very similar to a pledge, although not the same thing.

Mortgages are now made of personal property, as well as of real property; but we will consider in this section a mortgage of real property; or, as it is usually called, a mortgage deed.

This is usually a deed conveying the land to the creditor as fully, and in precisely the same way, as if it were sold to him outright; but with an addition. This consists of a clause inserted before the clause of execution, to the effect that if the grantor (the mortgagor) shall pay to the grantee (the mortgagee) a certain amount of money at a certain time, then the deed shall be void. It is usually expressed in words substantially like these:—

“Provided, nevertheless, that if the said A B (the grantor), his heirs, executors, or administrators, shall pay to the said C D (the grantee), his executors, administrators, or assigns, the sum of \$ with interest (semi-annually, or otherwise as agreed on), on or before the                      day of                      then this deed, and also a certain promissory note signed by said A B, whereby said A B promises to pay said C D, or his order, the said sum at the said time, shall both be void; and otherwise shall remain in full force.”

In some States it is more frequent to make a bond, instead of a note, to be secured by the mortgage; and the proviso should be altered accordingly; and it should also be made to express any other terms agreed on. Some of these will be spoken of presently.

In law, every thing is a mortgage which consists of a valid conveyance, and a promise, or agreement, providing that the conveyance shall be void when a certain debt is paid, or the act performed for which the mortgage is security.

This promise or agreement, which converts a simple conveyance of land into a mortgage, usually is contained in the deed itself; and should always be so, for the sake of safety and certainty. This is not, however, strictly necessary in point of law. The transaction becomes a mortgage, if the grantee gives back an instrument, in which it is agreed that the conveyance shall be void if a certain sum of money be paid, or a certain thing be done. This is called an instrument of defeasance; because it defeats or annuls, upon certain terms, the deed of conveyance.

While a common mortgage deed, like any of those of which forms are annexed to this chapter, gives rise to no nice questions of law, it is otherwise with a mortgage which consists of an outright deed of conveyance, and a separate instrument of defeasance. Here numerous questions have arisen, and are answered differently in different States. It may be said, however, that the instrument of defeasance, whatever be its form, must constitute a part of the original transaction. It is not essential that the defeasance be reduced to writing or executed, at the same time with the deed of conveyance. If executed afterwards, but in conformity with an original agreement to that effect, the defeasance and the deed of conveyance will be regarded as one transaction. And if they bear different dates, but are delivered together, they will constitute a mortgage.

Whatever be the date of the instrument of defeasance, if the party who made the deed of conveyance can show by sufficient evidence that the original bargain was that the land should only be mortgaged, and that the defeasance was made to carry out this agreement, it will be held to make a mortgage.

There is no especial rule now universally admitted as to the form of a separate defeasance. The earlier and stricter rule was, that the instrument of defeasance must be of as high a nature as the instrument of conveyance; that is, it must be like that, a deed. But in a majority of the States in which the question has come before the courts, it has been held that any written agreement which amounts in substance to a defeasance, although not a deed, suffices to make the conveyance a mortgage. This may now be considered as the general rule. But in some States the condition or defeasance must be inserted in the deed of conveyance.

In many of the States the courts relieve a party who has made an outright deed of conveyance without inserting any condition or receiving from the grantee any instrument of defeasance, provided he can show even by unwritten evidence that all he intended to make was a mortgage. But on this point the diversity of the decisions is very great. It must suffice to give the rule prevailing in the Supreme Court of the United States. This rule is, that wherever a deed of conveyance is absolute in its terms, but it would be a fraudulent act on the part of the grantee to insist upon its operating as an absolute deed, then the grantor may show, by written or unwritten evidence, that the deed was intended to be a mortgage.

If A makes an absolute deed of his land to B, and C buys it honestly of B, then C cannot be disturbed by A's showing that

there was an instrument of defeasance, or a bargain making it a mortgage, if C had no notice, by record or otherwise, and no knowledge, either of the instrument of defeasance or of the bargain.

The mortgagee has a title to the land; but it is subject to avoidance by payment of the debt. Until such payment, the land is his; and all the mortgagor owns in relation to it is a right to pay the debt and redeem the land.

It is commonly thought that the mortgagor has a right to retain possession until the debt is due and unpaid, and, in fact, he usually does so. But the mortgagee has, in law, the same right of immediate possession as a buyer; and, therefore, if it is not intended that he should have possession at once, the mortgage deed ought to contain a clause to the effect that the mortgagor may retain possession as long as he pays instalments and interest as due, and complies with his other agreements or promises.

Formerly, a mortgagor had a right to redeem his land only before or when the debt became due; for, if he did not pay the money when it was due, he had no further right. Now he can pay or tender the debt only when it is due. But for a long time a rule has been established which allows a mortgagor a longer time to redeem his land after the debt is due; and this is now the law in all our States. This right to redeem is called a right in equity to redeem, or, more briefly and commonly, an equity of redemption; which all courts now regard and protect. The mortgagor may sell this equity of redemption, or he may mortgage it by making a second or other subsequent mortgage of the land, and it may be attached by creditors, and would go to assignees as a part of his property if he became insolvent. The time within which a mortgagor may thus redeem his land is usually three years.

The law regards this equity as so important, that it will not permit a party to lose it by his own agreement. Thus, if a mortgagor agrees with the mortgagee, in the most positive terms, or in any way he can contrive, or for any consideration, that he will have no equity of redemption, and that the mortgagee may have possession and absolute title as soon as the debt is due and unpaid, the law sets aside all such agreements, and gives the debtor his equity of redemption for three years.

Within a few years, however, a way has been found to effect this purpose indirectly, which the law sanctions. Many persons object to lending their money on mortgage, because they will have to wait three years after the debt is due before the land can be certainly theirs. But it is now quite common for the mortgage deed to contain an agreement of the parties, that, if the money or the

interest thereon is not paid when it is due, the mortgagee may, in a certain number of days thereafter, sell the land (providing also such precautions to secure a fair price as may be agreed on), and, reserving enough to pay his debt and charges, pay over the balance to the mortgagor. This is called a power-of-sale mortgage. There are now in some of our States, statutes regulating these power-of-sale mortgages. Of course the provisions of these statutes prevail. But where such statute does not give to the mortgagee the right to purchase the land, he cannot do so; for he is considered in some measure as selling the land as a trustee for the mortgagor, and a trustee who sells land cannot sell to himself; that is, he can never buy the land which he sells. This rule is intended to guard against fraud.

The three years of redemption do not begin from the day when the debt is due and unpaid, unless the mortgagee then enters and takes possession for the purpose of *foreclosing* the mortgage, as the legal phrase is; by which phrase is meant extinguishing the equity of redemption. If the debt has been due a dozen years, the mortgagor may still redeem, unless the mortgagee has entered to *foreclose*, and three years have elapsed afterwards.

He may make entry for this purpose in a peaceable manner, before witnesses, as pointed out in the statutes regulating mortgages; or he may bring an action at law to get possession of the land.

If the mortgagor redeems, he must tender the debt, with interest, and the lawful costs and charges of the mortgagee; but he will be allowed such rents and profits as the mortgagee has actually received, or would have received but for his own fault.

One of these other agreements, which is now very common, is that the mortgagor shall keep the premises insured in a certain sum for the security of the mortgagee; or that the mortgagee may insure it, and charge the premium to the mortgagor; and, if there be such an agreement, it should be expressed in the deed. Otherwise, if the mortgagee insures the house, he cannot charge the premium to the mortgagor.

If a mortgagor erects buildings on the mortgaged land, or puts fixtures there, and the mortgagee takes possession of the land, and *forecloses* the mortgage, he gets all these additions, without paying for them. If the mortgagee puts them on the land, and the mortgagor redeems, he gets the benefit of them all, without paying the mortgagee for them. Such is the effect of the law if there be no bargain between the parties about these things. But they may make any bargain about them they choose to make.

## FORMS ANNEXED TO THIS CHAPTER.

18. A deed-poll of warranty, in common use in New England.
19. Deed of gift by indenture, without any warranty whatever.
20. Deed of bargain and sale without any warranty.
21. Quitclaim deed without any warranty.
22. Deed-poll of release and conveyance. Short form.
23. Deed with special warranty against the grantor only.
24. Quitclaim deed. Long form, with waiver of homestead.
25. Deed with covenant against grantor, without release of homestead or dower.
26. Separate relinquishment of homestead and dower in land sold under execution.
27. Full warranty deed, by indenture, without release of homestead or dower.
28. Warranty deed. Short form, with release of homestead and dower.
29. Warranty deed, with covenant against nuisances, without release of homestead or dower.
30. Bond for a deed.
31. Contract for sale of land, with penal obligation.
32. Power of attorney to sell lands.
33. Trust-deed for the benefit of a wife or some other person.
34. Trust-deed to secure payment of a note, without release of homestead or dower.
35. Trust-deed to secure a debt. Fuller form, with release of dower.
36. Trust-deed to secure a note. Shorter form, with warranty and release of homestead and dower.
37. Deed from trustees.
38. Deed of master in chancery.
39. Sheriff's deed on execution, in use in the Western States.
40. Sheriff's deed, in use in New England.
41. Sheriff's tax-deed, in use in the Western States.
42. Deed of executor, in use in the Eastern States.
43. Deed of executor, in the Middle States.
44. Deed of administrator of intestate.
45. Deed-poll of guardian of minor.
46. Deed of referee on foreclosure, in use in the Middle States.
47. Deed of collector of taxes.
48. Deed of assignee, in use in the Western States.
49. Promissory note, to be secured by mortgage.
50. Bonds to be secured by a mortgage.
51. Mortgage without power of sale and without warranty, but with release of homestead and dower.
52. Mortgage with power of sale, to secure a bond without release of dower.
53. Mortgage to secure a debt, with power of sale. Short form.
54. Mortgage to secure a debt. Fuller form, with power of sale.
55. Deed-poll of mortgage, with power to sell and insurance clause, and release of dower and homestead.

56. Mortgage by indenture, with power of sale and interest and insurance clause, to secure a bond.
57. Mortgage to executors, with power of sale.
58. Mortgage of a lease.
59. Mortgagee's deed under a power of sale.
60. Assignment of mortgage. Short form.
61. Assignment of mortgage, with power of attorney.
62. Assignment of mortgage by a corporation.
63. Discharge of mortgage. Short form.
64. Release and quitclaim of mortgage, as used in the Western States.
65. Discharge of mortgage, as used in the Middle States.
66. Discharge and satisfaction of a mortgage by a corporation.
67. Release of a part of the mortgaged premises.
68. Deed extending a mortgage.
- 48\*. Acknowledgment of grantor and wife, before commissioner for another State.

## (18.)

## A DEED-POLL OF WARRANTY, IN COMMON USE IN NEW ENGLAND.

KNOW ALL MEN BY THESE PRESENTS, That I, (*the grantor*), of (*residence, town or city, county and State*), (*occupation*), in consideration of (*the amount paid*) to me paid by (*here name the grantee or purchaser, giving in like manner his residence and occupation*), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said (*name the grantee, and then describe the premises granted, minutely and accurately*).

TO HAVE AND TO HOLD the above-granted premises to the said (*name the grantee*), his (*or hers or their*) heirs and assigns, to his (*or hers or their*) use and behoof for ever. And I, the said (*name of the grantor*), for (*myself*) and (*my*) heirs, executors, and administrators, do covenant with the said (*name of the grantee*), and with his heirs and assigns, that I am lawfully seised in fee-simple of the afore-granted premises; that they are free from all incumbrances (*if there be any incumbrances, as a mortgage or lien, or right of way, or drain, or air, or light, say excepting, and then describe the incumbrance*), that I have good right to sell and convey the same to the said (*name of the grantee*), and his (*or her*) heirs and assigns forever as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said (*name of the grantee*), and his heirs and assigns for ever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, I, the said (*name of the grantor*), and (*name of his wife*), wife of said grantor, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals, this                      day of                      in the year of our Lord eighteen hundred and

(Seals.)

Signed, sealed, and delivered in presence of

In those States in which a homestead law exists, the signature of the wife, with a clause like that above, would not release the



homestead. To effect this, the following clause should be inserted before the words, "In token of:"—

"In token of her release to the said (*name of the grantee*), of all her right, interest, and estate to or in the premises herein conveyed, under the homestead laws of this State; and also," &c.

Some conveyancers think this hardly sufficient, and prefer the following method, which would undoubtedly be effectual in every one of these States. Insert before the paragraph beginning, "In witness whereof," this paragraph:—

"And I (*name of the wife*), wife of the said (*the name of the grantor*), in consideration of one dollar to me paid by the said (*the name of the grantee*), the receipt whereof is acknowledged, do hereby release and assign to the said (*the name of the grantee*), and his heirs and assigns, all my right, interest, claim, and estate in or to the premises within granted, under the homestead laws of this State, or any other statutory provisions thereof."

It is to be remembered that, whether the deed be a warranty deed like that above given, or a release or quitclaim, or a mortgage deed, it is equally necessary and proper that the wife should release her homestead right and her dower, unless it is intended that she should retain them.

Below the deed comes the acknowledgment.

Commonwealth (or State) of \_\_\_\_\_ (County) ss. (Town, month, and date.)

Then personally appeared the above-named \_\_\_\_\_ and acknowledged the above instrument to be \_\_\_\_\_ free act and deed, before me,  
Justice of the Peace.

(19.)

DEED OF GIFT BY INDENTURE, WITHOUT ANY WARRANTY WHATEVER.

THIS INDENTURE, Made the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ between (*name, residence, and occupation of the grantor*), of the first part, and (*name, residence, and occupation of the grantee*), of the second part, witnesseth, That the said (*the grantor*) as well for and in consideration of the love and affection which he has and bears towards the said (*the grantee*) as for the sum of one dollar, lawful money of the United States, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has given, granted, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents does give, grant, alien, enfeoff, release, convey, and confirm, unto the said

party of the second part, and his heirs and assigns for ever, all (*here describe carefully the land or premises granted, by metes and bounds, and dimensions, contents or quantity, or boundary marks or monuments, and refer by volume and page to the deed of the land to the grantor, under which he holds it*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And, also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with their and every of their appurtenances. To have and to hold the said hereby granted and described premises, and every part and parcel thereof, with the appurtenances unto the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof for ever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and delivered in the presence of

(20.)

#### DEED OF BARGAIN AND SALE WITHOUT ANY WARRANTY.

THIS INDENTURE, Made the                      day of                      in the year one thousand eight hundred and                      between (*name, residence, and occupation of the grantor*), of the first part, and (*name, residence, and occupation of the grantee*), of the second part, witnesseth, That the said party of the first part, for and in consideration of the sum of                      lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns for ever, all (*here describe carefully the land or premises granted, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns for ever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY OF

} ss.

On this                      day of                      in the year one thousand eight hundred and                      before me personally came (*the name of the party of the first part, who is the grantor*), who is known by me to be the individual described, and who executed the foregoing instrument, and then and there acknowledged that he executed the same as and for his own deed.

(Signature.)

(21.)

#### QUITCLAIM DEED WITHOUT ANY WARRANTY.

THIS INDENTURE, Made the                      day of                      in the year one thousand eight hundred and                      between (*name, residence, and occupation of the grantor*), of the first part, and (*name, residence, and occupation of the grantee*), of the second part, witnesseth, That the said party of the first part, for and in consideration of the sum of                      lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released, and quitclaimed, and by these presents does remise, release, and quitclaim, unto the said party of the second part, and to his heirs and assigns for ever, all (*here describe carefully the land or premises granted, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns for ever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY OF

} ss.

On this

day of

in the year one thousand eight

hundred and before me personally came (*the name of the grantor*), who is known by me to be the individual described, and who executed the foregoing instrument, and acknowledged that he executed the same.

(*Signature.*)

(22.)

#### DEED-POLL OF RELEASE AND CONVEYANCE. SHORT FORM.

KNOW ALL MEN BY THESE PRESENTS, That I (*the name of releasor*), of the county of and State of for and in consideration of one dollar to me in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quitclaim unto (*the name of the releasee*), of the county of and State of all the right, title, interest, claim, or demand whatsoever I may have acquired in, through, or by a certain indenture or deed, bearing date the day of A.D. 18 and recorded in the office of county, and State of in book of page to the premises therein described, to wit (*here describe carefully the land or premises granted, as directed in Form 19*).  
WITNESS my hand and seal, this day of A.D. 18

(*Signature.*) (*Seal.*)

STATE OF }  
COUNTY. } ss.

I, in and for said county, in the State aforesaid, do hereby certify that (*the name of the releasor*), personally known to me as the same person whose name is subscribed to the foregoing deed, appeared before me this day, in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this day of  
A.D. 18

(*Signature.*) (*Seal.*)

(23.)

#### DEED, WITH SPECIAL WARRANTY AGAINST THE GRANTOR ONLY.

THIS INDENTURE, Made this day of in the year of our Lord one thousand eight hundred and sixty- between (*the name of the grantor*) and (*name of the wife of grantor*), wife of the said (*name of the grantor*), of the county of and State of parties of the first part, and (*name and residence of the grantee*), party of the second part: Witnesseth, that the said parties of the first part, for and in consideration of the sum of to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents, grant, bargain, and sell unto the said

party of the second part, and his heirs and assigns, the following-described tract or parcel of land, situate in (*here describe carefully the land or premises granted, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns for ever.

And the said the said parties of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said parties of the first part, for themselves and their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said premises, against the claim of all persons claiming or to claim by, through, or under him only, he will for ever warrant and defend.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

(*Signature of grantor.*) (Seal.)

(*Signature of wife of grantor.*) (Seal.)

Sealed and delivered in presence of

STATE OF }  
COUNTY. } ss.

I, in and for said county, in the State aforesaid, do hereby certify that (*name of the grantor*), personally known to me as the same person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of the grantor's wife*), wife of the said (*name of the grantor*), having been by me examined, separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her right under the homestead laws of this State, acknowledged that she had freely, and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by

virtue of all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and  
A.D. 186

seal, this day of

(Signature.) (Seal.)

(24.)

# QUITCLAIM DEED. LONG FORM, WITH WAIVER OF HOMESTEAD.

THIS INDENTURE, Made the day of in the year of our Lord one thousand eight hundred and sixty- between (name, residence, and occupation of the grantor, and name of the grantor's wife), parties of the first part, and (name, residence, and occupation of the grantee), party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, for ever released and discharged therefrom, have remised, released, sold, conveyed, and quitclaimed, and by these presents do remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns for ever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lot, piece, or parcel of land, to wit (*here describe carefully the land or premises granted, as directed in Form 19*).

TO HAVE AND TO HOLD THE SAME, Together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining; and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns for ever.

And the said parties of the first part hereby expressly waive, release, and relinquish unto the said party of the second part, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said parties of the first part, for themselves and their heirs, executors, and administrators, do covenant, promise, and agree to and with the said party of the second part, their heirs, executors, administrators, and assigns, that they have not made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever, whereby, or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered, in any way or manner whatsoever.

IN WITNESS WHEREOF, The said party of the first part hereunto set their hands and seals, the day and year above written.

(Signature of grantor.) (Seal.)

(Signature of wife of grantor:) (Seal.)

Signed, sealed and delivered in presence of

STATE OF }  
COUNTY. } ss.

I, in and for said county, and the State aforesaid, do hereby certify that (*name of the grantor*), being personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of the wife*), wife of the said (*name of the grantor*), having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this day of  
A.D. 186 (Signature.) (Seal.)

(25.)

# DEED, WITH COVENANT AGAINST GRANTOR, WITHOUT RELEASE OF HOMESTEAD OR DOWER.

THIS INDENTURE, Made the day of in the year one thousand eight hundred and between (*name of the grantor*), of the first part, and (*name of the grantee*), of the second part, witnesseth, That the said party of the first part, for and in consideration of the sum of lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns for ever, all (*here describe carefully the land or premises granted, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and his heirs and assigns, for ever.

And the said (*name of the grantor*), for himself and his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, and his heirs and assigns, that he has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be, impeached, charged, or incumbered in any manner or way whatsoever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY. } ss.

I, in and for said county, and the State aforesaid, do hereby certify, that (*name of the grantor*), being personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this day of  
A.D. 186

(Signature.) (Seal)

(26.)

#### SEPARATE RELINQUISHMENT OF HOMESTEAD AND DOWER IN LAND SOLD UNDER EXECUTION.

KNOW ALL MEN BY THESE PRESENTS, That we (*name and residence of the debtor*), and (*name of his wife*), wife of the said of the county of and State of parties of the first part, for the sum of one dollar to us paid by (*name of the purchaser*), of the county of and State of party of the second part, the receipt whereof is hereby acknowledged, do hereby agree and consent to let the said party of the second part levy and sell, under a certain execution, in favor of them, the said party of the second part, and against (*name of the creditor, or the defendant in the suit in which the execution issued*), now in the hands of the sheriff of the county of and State of and dated the day of A.D. 186 the following-described tract of land, situated in the county of and State of



to wit (*here describe carefully the land or premises granted, as directed in Form 19*), (and being the same land heretofore held, used, and occupied by the said parties of the first part as a homestead), hereby waiving, releasing, relinquishing, and surrendering to and in favor of said party of the second part, under the said levy and sale on said execution, all the right, title, claim, interest, and benefit which we, the said parties of the first part, and each of us, have in and to said premises, by virtue of any and all homestead exemption laws, now or heretofore in force in the State of \_\_\_\_\_ and more especially "An act to exempt homesteads from sale on execution," now in force in the State of \_\_\_\_\_

WITNESS our hands and seals, this the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 186 \_\_\_\_\_.  
 (Signature.) (Seal.)  
 (Signature.) (Seal.)

STATE OF \_\_\_\_\_ }  
 COUNTY. } ss.

I, \_\_\_\_\_ in and for said county, in the State aforesaid, do hereby certify that \_\_\_\_\_ personally known to me as the same persons whose names are subscribed to the annexed instrument, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said (*the name of the wife*), wife of the said \_\_\_\_\_ having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 186 \_\_\_\_\_.  
 (Signature.) (Seal.)

(27.)

# FULL WARRANTY DEED, BY INDENTURE, WITHOUT RELEASE OF HOMESTEAD OR DOWER.

THIS INDENTURE, Made the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ between (*name, residence, and occupation of the grantor*), party of the first part, and (*name, residence, and occupation of the grantee*), party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of \_\_\_\_\_ lawful money of the United States, to him in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, and his heirs, executors, and administrators, for ever released and discharged from the same, by these presents, has granted,

bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns for ever, all (*here describe carefully the land or premises granted, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof for ever.

And the said (*name of the grantor*), for himself and his heirs, executors, and administrators, does covenant, grant, and agree to and with the said party of the second part, and his heirs and assigns, that the said (*name of the grantor*), at the time of the sealing and delivery of these presents, is lawfully seised, in his own right, of a good, absolute, and indefeasible estate of inheritance, in fee-simple, of and in all and singular the above granted and described premises, with the appurtenances thereunto belonging; and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid: And that the said party of the second part, and his heirs and assigns, shall and may at all times hereafter, peaceably and quietly, have, hold, use, occupy, possess, and enjoy the above-granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, or his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same: and that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever.

And also that the said party of the first part, and his heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, or in trust for him or them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted or so intended to be, in and to the said party of the second part, his heirs and assigns, for ever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall be reasonably advised or required. And the said party of the first part, for himself and his heirs, the above described and hereby granted and released premises, and every part and parcel



session of the said party of the second part, and his heirs and assigns, the said party of the first part shall and will warrant and for ever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals, the day and year first above written.

(Signature of grantor.) (Seal.)

(Signature of wife of grantor.) (Seal.)

Signed, sealed, and delivered in presence of

STATE OF

COUNTY. } ss.

I, in and for said county, do hereby certify that (*name of grantor*), who is personally known to me as the same person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of the wife of grantor*), wife of the said (*name of the grantor*), having been by me examined separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing been by me fully made known and explained to her, and she also by me having been fully informed of her rights, under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages, under and by virtue of any and all laws of this State relating to the exemption of homesteads, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this day of  
A.D. 186

(Signature.) (Seal.)

(29.)

# WARRANTY DEED, WITH COVENANT AGAINST NUISANCES, WITHOUT RELEASE OF HOMESTEAD OR DOWER.

THIS INDENTURE, Made the day of in the year one thousand eight hundred and between (*name, residence, and occupation of the grantor*), party of the first part, and (*name, residence, and occupation of the grantee*), party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of lawful money of the United States, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, for ever released and discharged from the same, by these presents has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto

the said party of the second part, and to his heirs and assigns for ever, all (*here describe carefully the land or premises granted, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof: and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances, to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof for ever.

• And the said party of the first part, for himself and for his heirs, executors, and administrators, does hereby covenant, grant, and agree to and with the said party of the second part, and his heirs and assigns, that the said party of the first part, at the time of the sealing and delivery of these presents, is lawfully seised in his own right of a good, absolute, and indefeasible estate of inheritance, in fee-simple of and in all and singular the above granted and described premises, with the appurtenances to them belonging; and has good right, full power, and lawful authority to grant, bargain, sell, and convey the same, in manner aforesaid.

And that the said party of the second part, and his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, or his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same; and that the same now are free, clear, discharged, and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, and incumbrances, of what nature or kind soever.

And also that the said party of the first part, and his heirs, and all and every person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under or in trust for him or them, shall and will, at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby granted, or so intended to be, in and to the said party of the second part, his heirs and assigns, for ever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised or required: and the said party of the first part, for himself and for his heirs, the above-described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, and his heirs and assigns, against the said party of the first part, and

his heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents for ever defend.

And the said party of the second part, for himself and for his heirs and assigns, does hereby covenant to and with the said party of the first part, and with his heirs, executors, and administrators, that neither the said party of the second part, nor his heirs or assigns, shall or will at any time hereafter erect or permit upon any part of the said lot, any slaughter-house, smith-shop, forge, furnace, steam-engine, brass-foundry, nail or other iron factory, or any manufactory of gunpowder, glue, varnish, vitriol, ink, or turpentine, or for the tanning, dressing, or preparing skins, hides, or leather, or any brewery, distillery, livery-stable, or buildings for any noxious or dangerous trade or business.

IN WITNESS WHEREOF, The parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

(Signature.) (Seal.)  
(Signature.) (Seal.)

Sealed and delivered in presence of

STATE OF }  
COUNTY OF } ss.

On this                      day of                      in the year one thousand eight hundred and                      before me personally came (*the name of the party of the first part, who is the grantor*), who is known by me to be the individual described, and who executed the foregoing instrument, and then and there acknowledged that he executed the same as and for his own deed.

(Signature.)

(30.)

#### BOND FOR A DEED.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of the obligor*), of the county of                      and State of                      am held and firmly bound to (*name of the obligee*), of the county of                      and State of                      in the sum of                      dollars, to be paid to said (*name of obligee*), or his executors, administrators, or assigns, to the payment whereof I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated the                      day of                      A.D. 18                     

THE CONDITION of this obligation is that if I the said (*name of the obligor*), upon payment of                      dollars, and interest thereon, as agreed and promised by said (*name of the obligee*), agreeably to his promissory note, dated                      18                      and made payable as follows, to wit (*here set forth the note. If there be no note from the obligee, omit this part*), shall convey to said (*name of the obligee*), or his heirs, executors, or assigns, for ever, the following-described real estate, situate, lying, and being in the county of                      and State of                      to wit (*here describe care-*

fully the land or premises granted, as described in Form 19), deed or deeds in common form, duly executed and acknowledged, and in the mean time shall permit said (*name of the obligee*) to occupy and improve said premises for his own use, then this obligation shall be void, otherwise it shall remain in full force.

(Signature.) (Seal.)

Signed, sealed, and delivered, in presence of

STATE OF

COUNTY OF

} ss.

BE IT REMEMBERED, That on this                      day of                      A.D. 18                      before the undersigned, a notary public (*or other magistrate*), within and for the county of                      aforesaid, personally came (*name of the obligor*), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing, as the obligor therein, and acknowledged the same to be his free act and deed, for the purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in                      the day and year first above written.

(Signature.) (Seal.)

(31.)

#### CONTRACT FOR SALE OF LAND, WITH PENAL OBLIGATION.

ARTICLES OF AGREEMENT, Made and concluded this                      day of                      A.D. 18                      between                      of the county of                      and State of                      of the one part, and                      of the county of                      and State of                      of the other part, as follows: —

THE SAID (*name of the party of the first part*), for the consideration hereinafter mentioned, does for himself and for his heirs, covenant and agree with the said (*name of the party of the second part*), and his heirs and assigns, by these presents, that he the said party of the first part, shall and will, on or before the                      day of                      A.D. 18                      at the proper costs and charges of the said party of the first part (*or of the second part, if that is agreed*), his heirs and assigns, by good and lawful deed or deeds, well and sufficiently grant, convey, and assure unto the said party of the second part, his heirs and assigns, in fee-simple, clear of all incumbrances, all that certain tract or parcel of land lying, being, and situate in the county of                      State of                      as follows, to wit (*here describe carefully the land or premises granted, as directed in Form 19*).

IN CONSIDERATION WHEREOF, The said (*here the name of the party of the second part*), for himself and his heirs, does covenant and agree with the said party of the first part, and with his heirs and assigns, by these presents, that he, the said party of the second part, and his heirs, or some of them, shall and will, on the execution and delivery of the said deed or deeds as aforesaid, well and truly pay, or cause to be paid, unto the said party of the first part, or his heirs and assigns, the sum of                      dollars, in the manner following, to wit (*set forth the terms and times of payment as*

agreed on). And upon (*set forth the time agreed on*), the said party of the first part shall give to the said party of the second part possession of the aforesaid premises.

And for the true performance of all and every the covenants and agreements aforesaid, each of the said parties bindeth himself, his heirs, executors and administrators, unto the other, his executors, administrators, and assigns, in the penal sum of                      dollars.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature.) (Seal.)

(Signature.) (Seal.)

Signed, sealed, and delivered, in presence of us,

(If it is intended that this contract should be recorded, — in almost all cases it should be, — an acknowledgment by both parties should follow; and the record should be like that in the next Form.)

(32.)

#### POWER OF ATTORNEY TO SELL LANDS.

KNOW ALL MEN BY THESE PRESENTS, That I, the undersigned (*name of the selling party*), of the town (*or city*) of                      county of                      and State of                      have this day made, constituted, and appointed, and do by these presents make, constitute, and appoint (*name of attorney*), of the town (*or city*) of                      in the county of                      and State of                      my true and lawful attorney, for me and in my name, to sell and dispose of, absolutely, in fee-simple, the following described lot, tract, or parcel of land, or any part thereof, situate, lying, and being in the county of                      and State aforesaid, to wit (*here describe carefully the land or premises granted, as directed in Form 19*), for such price or sum of money, and to such person or persons as he shall think fit and convenient; and also for me and in my name, and as my act and deed, to sign, execute, acknowledge, and deliver, such deed or deeds, and conveyance or conveyances, for the absolute sale or disposal thereof, or of any part thereof, with such clause or clauses, covenant or covenants, and agreement or agreements, to be therein contained, as my said attorney shall think fit and expedient; hereby ratifying and confirming all such deeds, conveyances, bargains, and sales which shall at any time hereafter be made by said attorney touching or concerning the premises.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, on this                      day of                      A.D. 18

(Signature.) (Seal.)

STATE OF                      }  
COUNTY OF                      } ss.

BE IT REMEMBERED, That on this                      day                      A.D. 18  
before the undersigned, a notary public (*or other magistrate*), within and



for the county of \_\_\_\_\_ and State of \_\_\_\_\_ personally came  
*(the name of the principal)*, who is personally known to me to be the same  
 person whose name is subscribed to the foregoing instrument of writing,  
 and acknowledged the same to be his free act and deed, for the purposes  
 therein mentioned.

IN WITNESS WHEREOF, I have hereto set my hand, and affixed my  
 official seal, at my office in \_\_\_\_\_ the day and year first above written.

(Signature.) (Seal.)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

} ss. IN THE RECORDER'S OFFICE.

I, \_\_\_\_\_ clerk of the Circuit Court, and *ex-officio* recorder of  
 said county (*or whoever else is the recording officer*), do hereby certify that  
 the within instrument of writing was on the \_\_\_\_\_ day of  
 A.D. 18 \_\_\_\_\_ duly filed for record in this office, and is recorded in the records  
 of this office, in book \_\_\_\_\_ at page \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the  
 seal of said court, at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 A.D. 18 \_\_\_\_\_

Recorder.

Per \_\_\_\_\_

Deputy.

(33.)

# TRUST-DEED FOR THE BENEFIT OF A WIFE OR SOME OTHER PERSON.

THIS DEED, Made and entered into this \_\_\_\_\_ day of \_\_\_\_\_  
 eighteen hundred and sixty-\_\_\_\_\_ by and between (*name, residence,*  
*and occupation of the grantor*), party of the first part, and (*the name, resi-*  
*dence and occupation of the trustee*), party of the second part, and (*name of*  
*the wife or any person who is to have the benefit of the trust*), party of the  
 third part, witnesseth: That the said party of the first part, in considera-  
 tion of the sum of \_\_\_\_\_ dollars, to him in hand paid by the said  
 party of the third part, the receipt of which is hereby acknowledged, and  
 the further sum of one dollar to him paid by the said party of the second  
 part, the receipt of which is hereby also acknowledged, do, by these pre-  
 sents, give, grant, sell, transfer, convey, and assign unto the said party of the  
 part, the following-described tract or parcel of land, that is to  
 say (*here describe the premises carefully, as directed in Form 19*).

TO HAVE AND TO HOLD THE SAME, With all the rights, privileges, and  
 appurtenances thereto belonging, or in any wise appertaining, unto him  
 the said party of the second part, his heirs and assigns for ever: In trust,  
 however, to and for the sole and separate use, benefit, and behoof of  
 wife of the said (*or the name of the son or daughter, or any*  
*other person, may be substituted for that of the wife*), and the said party  
 of the second part hereby covenants and agrees to and with the said  
 the party of the third part, that he will suffer and permit her  
 (*or him*), without let or molestation, to have, hold, use, occupy, and enjoy

the aforesaid premises, with all the rents, issues, profits, and proceeds arising therefrom, whether from sale or lease, for her own sole use and benefit, separate and apart from her said husband, and wholly free from his control and interference, debts, and liabilities, courtesy, and all other interests whatsoever; and that he will, at any and all times hereafter, at the request and direction of the said (*name of the party of the third part*), expressed in writing, signed by her (*or him*) or by her (*or his*) authority, bargain, sell, mortgage, convey, lease, rent, convey by deed of trust for any purpose, or otherwise dispose of said premises, or any part thereof, to do which full power is hereby given, and will pay over the rents, issues, profits, and proceeds thereof to the said party of the third part, and that he will, at the death of the said party of the third part, convey or dispose of the said premises, or such part thereof as may then be held by him under this deed, and all profits and proceeds thereof, in such manner, to such person or persons, and at such time or times, as the said party of the third part shall, by her (*or his*) last will and testament, or any other writing signed by her, or by her authority, direct or appoint; and in default of such appointment, that he will convey such premises to (*here state what it is intended shall be done with the property at the death of the party of the third part if he or she die intestate*). And the said party of the third part shall have power at any time hereafter, whenever she (*or he*) shall from any cause deem it necessary or expedient, by an instrument in writing under her (*or his*) hand and seal, and by her (*or him*) acknowledged, to nominate and appoint a trustee, or trustees, in the place and stead of the party of the second part above named; which trustee or trustees, or the survivor of them, or the heirs of such survivor, shall hold the said real estate upon the same trust as above recited; and upon the nomination and appointment of such new trustees, the estate in trust hereby vested in said party of the second part shall thereby be fully transferred and vested in the trustee or trustees so appointed by the said party of the third part. And said party of the first part hereby covenants to warrant and defend the title to the said real estate against the lawful claims of all persons whomsoever, to the said parties of the second and third parts, their heirs and assigns. And the said party of the second part covenants faithfully to perform and fulfil the trust herein created.

IN TESTIMONY WHEREOF, The said parties have hereunto set their hand and seal the day and year first above written.

(Signature.) (Seal.)

(Signature.) (Seal.)

(Signature.) (Seal.)

THE STATE OF

COUNTY OF

} ss.

BE IT REMEMBERED, That on the \_\_\_\_\_ day of \_\_\_\_\_ eighteen hundred and sixty-\_\_\_\_\_ before me, the undersigned came (*the persons who execute the instrument*), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their free act and deed for the purposes therein mentioned.

(Signature.)

(34.)

TRUST-DEED TO SECURE PAYMENT OF A NOTE, WITHOUT RELEASE  
OF HOMESTEAD OR DOWER.

**THIS DEED**, Made and entered into this                  day of  
eighteen hundred and                  by and between (*name and occupation of the grantor who is the debtor*), of the county of                  State of                  part  
of the first part, and (*name and occupation of the trustee*), of the county of                  State of                  part                  of the second part, and  
*(name and occupation of the creditor for whose benefit the deed is made)*, of  
the county of                  State of                  part                  of the third part:

WITNESSETH, That the said party of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to him paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents grant, bargain, and sell, convey, and confirm, unto the said party of the second part, the following-described real estate, situate, lying, and being in the county of \_\_\_\_\_ and State of \_\_\_\_\_ to wit (*here describe carefully the land or premises granted, as described in Form 19*).

TO HAVE AND TO HOLD the same, with the appurtenances, to the party of the second part, and to his successor or successors in this trust, and to him and his heirs and his and their grantees and assigns, for ever.

IN TRUST, however, for the following purposes: Whereas the said party of the first part has this day made, executed, and delivered to the said party of the third part, his promissory note of even date herewith, by which he promises to pay to the said (*name of the creditor*), or order, for value received, 100 dollars, in (*the days or months when the note is payable*).

Now, THEREFORE, if the said party of the first part, or any one for him, shall well and truly pay off and discharge the debt and interest expressed in the said note and every part thereof, when the same becomes due and payable, according to the true tenor, date, and effect of said note, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said party of the first part; but, should the said first party fail or refuse to pay the said debt, or the said interest, or any part thereof, when the same or any part thereof shall become due and payable, according to the true tenor, date, and effect of said note, then the whole shall become due and payable, and this deed shall remain in force; and the said party of the second part, or in case of his absence, death, refusal to act, or disability in any wise, the (then) acting sheriff of county, at the request of the legal holder of the said note, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at in the of county for cash, first giving days' public notice of the time, terms, and place of sale, and of the property to be sold, by advertisement in some newspaper printed and published in the of and upon such sale shall execute and

**THIS DEED**, Made and entered into this                      day of  
eighteen hundred and sixty-                      by and between (*name and occu-*  
*pation of the debtor who is grantor*), and (*name of the wife of the grantor*),  
of (*residence*), parties of the first part, and (*name of the grantees who are*  
*the trustees*), of (*residence*), parties of the second part, and (*name, residence,*  
*and occupation of the creditor for whose benefit the trust is created*), of  
party of the third part, witnesseth, that the said parties of the  
first part, in consideration of the debt and trust hereinafter mentioned and

created, and of the sum of one dollar to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, and sell, convey, and confirm, unto the said parties of the second part, the following-described real estate, to wit (*here describe carefully the land or premises granted, by metes and bounds, as directed in Form 19.*)

TO HAVE AND TO HOLD the same with the appurtenances, to the said parties of the second part, and to the survivor of them, and to their successor hereinafter designated, and to the assigns of the said parties of the second part, or of said survivor, or of said successor and his heirs, for ever.

IN TRUST, however, for the following purpose: Whereas the said (*name of the grantor and debtor*), (*here describe the debt, and if a promissory note is given, describe that, or set forth a copy of it*), and has also agreed and covenanted, to and with the said party of the third part and his indorsees or assignees, to cause all taxes and assessments, general and special, to be paid within the times required by law, whenever imposed upon said property, and has also further covenanted and agreed, to and with said party of the third part, his indorsees or assignees, that he will keep the improvements upon said property constantly insured in some good and responsible insurance office or offices, to be approved by said party of the third part, his indorsees or assignees, in a sum not less than                      dollars, until said notes are (*or note is*) fully paid, and will assign the policy or policies of insurance to said party of the third part, his indorsees or assignees, with full power to demand, receive, and collect any and all moneys accruing under said insurance, and the same to apply to the payment of said notes and the interest that may accrue thereon, unless otherwise paid, when the same become due, and has also covenanted and agreed, to and with said party of the third part, his indorsees or assignees, that there shall not, at any time while said notes remain unpaid, be any mechanics' liens filed or taken, upon the real estate herein described, or upon the buildings which now are, or may hereafter be, erected upon said real estate, and that should said party of the first part fail or neglect to pay said taxes, when the same are by law due and payable, or fail or neglect to effect insurance and assign the policy or policies as above provided, or fail or neglect to keep said real estate free from mechanics' liens, the said party of the third part, his indorsees or assignees, may, at his option, consider the notes above mentioned and described as having each and all become due and payable, though not then due by the tenor and effect thereof, and may require the said parties of the second part, or the survivor of them, or their successor in trust, to sell the property above described as hereinafter provided, or may pay said taxes, or the premium for such insurance, or the amount of said mechanics' liens, and the amount or amounts so paid, together with interest thereon, at the rate of ten per cent per annum, shall be taken and considered as a part of the amount secured hereby, and to be paid and refunded out of the proceeds of sale, should such sale be made, as hereinafter provided.

Now, if the said notes be well and truly paid, as the same severally become due and payable, according to the tenor and effect of said notes, and each of them, and if the said covenants and agreements in regard to

taxes, insurance, and mechanics' liens be faithfully-kept and performed, and all moneys paid by said party of the third part, his indorsees or assignees, on account of said taxes, insurance, and mechanics' liens, are refunded, with the interest thereon, as above provided, then this deed shall be void, and the property hereinbefore conveyed shall be released at the cost of the said parties of the first part; but should default be made in the payment of the said notes, or either of them, or any part of either of them, or of the interest that may accrue thereon, or any part thereof, as the same severally become due and payable, or if the said parties of the first part fail or neglect to pay said taxes, when due and payable, or to insure the buildings on said property, or to keep the same free from mechanics' liens, as provided in the foregoing covenants and agreements, or to refund to said party of the third part, his indorsees or assignees, the amount paid by him or them for said taxes, insurance, or mechanics' liens, with interest thereon, as above provided, then this deed shall remain in force, and the said parties of the second part, or either of them, or the survivor of them, or in the event of the death of both of them, or absence from this State, or their refusal to act, or other disqualification for the performance of the duties of this trust, then, at the request of the holder of said notes, the sheriff of the county of \_\_\_\_\_ for the time being (who shall thereupon become the successor of said trustees, and of the survivor of them, to the title of said property, and the same become vested in him, in trust, for the purposes and objects of these presents, with all the powers, duties, and obligations thereof), may proceed to sell said described property, or any part thereof, at public vendue, to the highest bidder, for cash, at the (*state the place of sale*), first giving twenty days' public notice of the time, terms, and place of said sale, and the property to be sold, by advertisement in some newspaper printed in the English language, and published in the county of \_\_\_\_\_ and upon such sale, the said parties of the second part, or either of them, or the survivor of them, or their successor in trust, the sheriff of said county, as the case may be, shall execute and deliver a deed or deeds, in fee-simple, of the property sold, to the purchaser or purchasers thereof (a recital wherein of the request of the holder of said notes that they should proceed to sell, of the publication of said notice, and in case of sale by the sheriff of said county, of the happening of any or either of the events making him successor in this trust, shall be received in all courts of law or equity, and to all intents and purposes, as full and sufficient proof thereof), and shall receive the proceeds of said sale, out of which shall be paid, first, the cost and expenses of executing this trust, including compensation to said trustee, or said sheriff, for their or his services, next the amount paid by said party of the third part, or his indorsees or assignees, for taxes, insurance, or mechanics' liens, with ten per cent per annum interest thereon, from the date of the payment thereof, and next, the amount remaining unpaid upon the principal note above described, together with all of the interest notes then due, and so much of the interest note next falling due, as may be necessary to satisfy the interest on said principal note at the rate of \_\_\_\_\_ per cent per annum, from the date when the preceding interest note became due, up to the day of sale, it being distinctly understood and agreed between the parties hereto that the fail-

ure to pay any one of said notes, principal or interest, when due and payable, shall cause the principal note to become immediately due and payable, though not then due by the terms, tenor, or effect thereof, and the remainder, if any, shall be paid to the said parties of the first part, or their legal representatives.

And the said parties of the second part covenant faithfully to perform and fulfil the trust herein created.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of grantor.) (Seal.)

(Signature of grantor's wife.) (Seal.)

(Signature of trustee.) (Seal.)

(Signature of other trustee.) (Seal.)

(Signature of creditors.) (Seal.)

Signed, sealed, and delivered, in presence of

STATE OF

COUNTY OF

} ss.

BE IT REMEMBERED, That on this                      day of  
eighteen hundred and sixty-                      before me, the undersigned,  
came (*names of the parties who execute the deed*), who are personally known  
to me to be the same persons whose names are subscribed to the foregoing  
instrument of writing, as parties thereto, and                      acknowledged the  
same to be their act and deed, for the purposes therein mentioned.

And                      the said                      having been by me first made  
acquainted with the contents of said instrument, on an examination separate  
and apart from her husband, acknowledged that she executed the  
same freely, and without compulsion or undue influence of her said  
husband.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of  
office, the day and year first above written.

(36.)

TRUST-DEED TO SECURE A NOTE. SHORTER FORM, BUT WITH  
WARRANTY AND RELEASE OF HOMESTEAD AND DOWER.

THIS INDENTURE WITNESSETH, that (*name, residence, and occupation of grantor*), and (*name of the wife of grantor*), wife of the grantor herein, in consideration of the indebtedness hereinafter mentioned, and one (\$1) dollar to them paid by (*name, residence, and occupation of the trustee*), grantee, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, remise, release, and convey unto the said grantee, the following-described lot, piece, or parcel of land, situate in the county of                      and State of                      to wit (*here describe carefully the land or premises granted, as directed in Form 19*).

TO HAVE AND TO HOLD the same, with all the privileges thereunto or in any wise appertaining, and all the estate, right, title, interest, claim, or

demand in and to the same, either now or which may be hereafter acquired, unto the said grantee, his heirs and assigns. In trust, nevertheless, for the following purposes:

WHEREAS, the said (*name of the grantor*), grantor herein, is justly indebted upon a certain promissory note, bearing even date herewith, payable to the order of (*here describe the note*).

Now, in case of default in the payment of said note or any part thereof, or the interest accruing thereon, according to the tenor and effect thereof, or in the payment of any taxes or assessments, ordinary or special, which may be levied or assessed against said premises during the continuance hereof, on the application of the legal holders of the said note, the said grantee (full power being hereby given), or his legal representatives, after having advertised such sale

days in a newspaper published in or by posting up written or printed notices in four (4) public places in the county where said premises are situate (personal notice being hereby expressly waived), shall sell the said premises or any part thereof, and all the right and equity of redemption of the said grantor, or his heirs, executors, administrators, or assigns therein, at public vendue, to the highest bidder for cash, at

at the time appointed in the said advertisement, or may adjourn the sale from time to time at discretion, and as the attorney of the said grantor, for such purpose hereby constituted irrevocable, or in the name of the said grantee or his legal representatives, shall execute and deliver to the purchaser or purchasers thereof, deeds for the conveyance in fee of the premises sold, and shall apply the proceeds of sale (1st) to the payment of all advances made by the said party of the second part for taxes and assessments; and expenses for advertising, selling, and conveying as aforesaid, including attorney's fees, and (2d) the amount due on said note, (3d) rendering the overplus, if any there be, to the said grantor or

legal representatives, at the office of the said grantee in and it shall not be the duty of the purchaser to see to the application of the purchase-money.

And the said (*names of the grantor and of his wife*), parties of the first part, hereby expressly waive, release, and relinquish unto the said party of the second part, the said grantee, his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever, in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads; provided, that the said grantor and his heirs and assigns may hold and enjoy said premises, and the rents, issues, and profits thereof, until default shall be made as aforesaid; and that when the said note and all expenses accruing hereby shall be fully paid, the said grantee or his legal representatives shall reconvey all the estate acquired hereby in the said premises, or any part thereof, then remaining unsold, to (and at the cost of) the said grantor, or his heirs or assigns.

And the said grantor covenants with the said grantee and with his legal representatives and assigns that he is seized in fee of the said premises, and has good right to convey the same in form aforesaid, that they are free from all liens or incumbrances of whatever name or nature, and that he



will warrant and defend the same against all claims whatsoever, and will pay all taxes or assessments levied or assessed on the said premises, or any part thereof, during the continuance hereof, and pay the same ten days before the day of sale thereof.

WITNESS the hands and seals of the said (*names of grantor and his wife*),  
this                      day of                      A.D. 186

(*Signature of grantor.*)                      (*Seal.*)

(*Signature of wife of grantor.*)                      (*Seal.*)

In presence of

STATE OF

COUNTY. } ss.

On the                      day of                      eighteen hundred and sixty-  
before me                      of the county of                      in the State of  
appeared (*name of the grantor*), personally known to me to be the real person  
whose name                      subscribed to the foregoing deed of trust, as having  
executed the same, and then acknowledged the execution thereof as  
free act and deed for the uses and purposes herein mentioned.

And the said (*name of the wife of grantor*) (who is personally known to me to be the same person who subscribed the said instrument of writing), having had the contents of the said instrument made known and fully explained to her, and she also by me being fully informed of her rights under the homestead laws of the State, and being by me examined, separate and apart from her said husband, did acknowledge said instrument to be her free act and deed; that she executed the same, and relinquished her dower in the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, voluntarily and freely, and without the compulsion of her husband, and that she does not wish to retract.

Given under my hand and official seal, this                      day of  
A.D. 186

(*Signature.*)                      (*Seal.*)

(37.)

#### DEED FROM TRUSTEES.

THIS DEED, Made and entered into this                      day of                      in  
the year eighteen hundred and                      by and between (*names of trustees*),  
party of the first part, and (*name, residence, and occupation of grantee*),  
party of the second part, witnesseth, that whereas (*name of the party who*  
*conveyed the estate to the trustees*), by deed dated the                      day of  
186                      recorded in the recorder's office of                      county, State of  
in book                      conveyed the property hereinafter described,  
in trust to said (*name of trustees*) to secure the payment of certain promissory  
notes in said deed described; and whereas (*here describe the non-pay-*  
*ment or other default which has authorized the sale by the trustees*) and the  
party herein of the first part, at the request of the legal holder of said  
promissory notes acting in pursuance of the provisions of said deed of

trust, and having first given \_\_\_\_\_ days' public notice of the time, terms, and place of sale, and of the property to be sold, by an advertisement inserted on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ in the \_\_\_\_\_ a daily newspaper printed in the city of \_\_\_\_\_ and continued to the day of sale (as will appear by the copy of said advertisement and affidavit of publication thereof hereto annexed as a part of this deed), did proceed to sell the property described in said deed at public vendue to the highest bidder for cash, at \_\_\_\_\_ in the city of \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 186 \_\_\_\_\_ between the hours of ten o'clock in the morning and five o'clock in the afternoon of said day, when and where the same was struck off to (*the name of the purchaser who is the grantee*) as the highest and last bidder therefor, at the price and sum of \_\_\_\_\_ dollars, full payment whereof is hereby acknowledged: now, said party of the first part, by virtue of the proceedings aforesaid, and in consideration of the sum of \_\_\_\_\_ dollars to him in hand paid by said party of the second part, does by these presents bargain, sell, and convey to said. (*name of the grantee*) all the right, title, and interest (which by virtue of said trust-deed and the proceedings aforesaid he may or can bargain, convey, or sell) in and to the property described in said deed of trust, to wit: (*here describe the land or premises granted in the same way in which they are described in the deed of trust under which the trustees act*).

TO HAVE AND TO HOLD the said described premises unto said (*name of the purchaser*), and unto his heirs and assigns, for ever.

IN WITNESS WHEREOF, the said party of the first part has hereto set his hand and seal, the day and year first herein above written.

(Signature.) (Seal.)

(Signature.) (Seal.)

In presence of

STATE OF

COUNTY. } ss.

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 186 \_\_\_\_\_ before me, the undersigned \_\_\_\_\_ personally came who are to me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned.

(Signature.)

(38.)

# DEED OF MASTER IN CHANCERY.

THIS INDENTURE, Made this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_ between (*name of grantor*), Master in Chancery, in and for the county of \_\_\_\_\_ and State of \_\_\_\_\_ of the first part, and (*name of grantee*) of the second part, witnesseth: That whereas, at the term of the \_\_\_\_\_ court of the said county of \_\_\_\_\_ and State of \_\_\_\_\_ in the year of our Lord A.D. 18 \_\_\_\_\_ in a certain suit and

proceedings in chancery, pending in said court, wherein were complainant , and were defendant , to obtain a decree for the sale of the property hereinafter described, and for other relief, it was ordered, adjudged, and decreed by the court, that (*here set forth the decree under which the sale is made*); and the Master in Chancery, in and for the county of and State of was appointed to execute the said decree, and to make, execute, and deliver to the complainant a deed to the said premises as aforesaid, conveying to (*the name, residence, and occupation of the grantee*), all the interest and title of the defendant to said premises.

NOW, THEREFORE, KNOW ALL MEN BY THIS DEED, That I, Master in Chancery as aforesaid, in consideration of one dollar to me paid by the said party of the second part, the receipt whereof I acknowledge before the execution hereof, and by virtue of the decree aforesaid, have granted, bargained, and sold, and do hereby grant, bargain, and sell, unto the said party of the second part, his heirs and assigns, for ever, the following-described real estate, lying in the county of and State of to wit: (*here describe carefully the land or premises granted, as directed in Form 19*).

TO HAVE AND TO HOLD the said premises, with all the appurtenances thereto belonging, unto the said party of the second part, his heirs and assigns, for ever.

IN TESTIMONY WHEREOF, The said Master in Chancery of county, in the State of has hereto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

In presence of

STATE OF }  
COUNTY. } ss.

I, clerk of the county court in and for the county of and State of do hereby certify that the above-named whose name appears signed to the foregoing deed, is personally known to me to be the same person described therein, and acknowledged to me that, as Master in Chancery aforesaid, he executed the said deed freely for the uses and purposes therein mentioned.

Given under my hand and official seal, at this day of A.D. 18 (Signature.) Clerk. (Seal.)

(39.)

#### SHERIFF'S DEED ON EXECUTION, IN USE IN THE WESTERN STATES.

WHEREAS (*the name of the plaintiff in the suit in which the execution is-sued*) did, at the term, in the year eighteen hundred and sixty- of the court for the county of in the State of recover a judgment against (*name of the defendant in*

*that suit*) for the sum of                      and costs of suit, upon which judgment an execution was issued, dated on the                      day of                      in the year eighteen hundred and sixty-                      directed to the sheriff of                      county, to execute, and by virtue of said execution (*name of the sheriff*), of                      then sheriff of said county, levied upon the lands hereinafter described, and the same were struck off and sold to (*name of the purchaser at the sheriff's sale*), he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law.

And the said (*name of the purchaser*) having duly assigned his certificate of purchase to (*name of the grantee*).

NOW, THEREFORE, KNOW ALL BY THIS DEED, That I (*name of the sheriff*), sheriff of said county of                      in consideration of the premises, have granted, bargained, and sold, and do hereby convey to the said (*name of the grantee*), his heirs and assigns, the following-described tract of land, to wit: (*here describe carefully the land or premises granted, as directed in Form 19*).

TO HAVE AND TO HOLD the said described premises, with all the appurtenances thereto belonging, to the said (*name of the grantee*) and his heirs and assigns for ever.

WITNESS my hand and seal, this                      day of                      in the year of our Lord one thousand eight hundred and sixty-

(*Signature.*) (*Seal.*)

Sheriff of                      County.

In presence of

STATE OF

COUNTY OF

} ss.

I,                      clerk of the                      court of                      county, do certify that                      sheriff of                      county, personally known to me to be the real person whose name is subscribed to the within annexed deed, this day acknowledged before me that he executed the said deed, as such sheriff, voluntarily and freely, for the use and purposes therein set forth.

Given under my hand, and the seal of said court, this                      day of                      eighteen hundred and sixty-

(*Signature.*)                      Clerk. (*Seal.*)

(40.)

# SHERIFF'S DEED, IN USE IN NEW ENGLAND.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of the deputy sheriff selling*), of                      in the county of                      and State of                      and a deputy sheriff under (*name of the sheriff*), Esq., sheriff of said county, having, on the                      day of                      in the year of our Lord one thousand eight hundred and                      by virtue of a writ of execution,

which was issued upon a judgment, recovered at the term of the court holden at                      within and for the county of                      on the                      in the year of our Lord eighteen hundred and                      by                      (*name of the plaintiff in the suit*), of                      in the county of                      against (*name of the defendant in that suit*), of                      in the county of                      for the sum of                      dollars and                      cents damage and costs of suit taxed at                      dollars and cents, seized and taken all the right in equity which the said had on the                      day of                      in the year of our Lord eighteen hundred and                      being the time when the same was attached on mesne process of redeeming the following-described mortgaged real estate, to wit (*here describe carefully the land or premises granted, as directed in Form 19*); and having on the                      day of                      last, being thirty days at least before the time of the sale hereinafter mentioned, given notice in writing to the said (*name of the defendant*) of the time and place of sale, and having posted up notifications thereof in one public place in said town of                      and in one public place in each of the towns of                      and                      being two towns adjoining said town of                      and also having caused an advertisement of the time and place of sale to be published three weeks successively, before the day of sale, in the public newspaper called the                      printed at                      in said county of                      on the                      day of                      in the year of our Lord eighteen hundred and                      made sale of said right in equity of redemption at public auction, to (*name of the purchaser*), of                      in                      he being the highest bidder for the same, for the sum of                      dollars. Now, therefore, in consideration of said sum of                      dollars to me paid by the said (*name of the purchaser*), the receipt whereof I do hereby acknowledge, I have given, granted, bargained, and sold, and do, by these presents, give, grant, bargain, sell, and convey, to the said (*name of the purchaser*), his heirs and assigns, for ever, all the right in equity which the said (*name of the defendant*) had of redeeming the aforesaid mortgaged real estate, at the time aforesaid. To have and to hold the same to the said (*name of purchaser*); his heirs and assigns, to his and their use for ever; subject, however, to be redeemed agreeably to the law in such case made and provided. And I, the said (*name of grantor*), in my said capacity of deputy sheriff, do covenant with the said (*name of purchaser*) as aforesaid, that, in making said sale, and in every thing concerning the same, I have complied with and observed the rules and requisitions of the law for making sales of rights in equity to redeem real estate. But I do not warrant or defend to the said (*name of the purchaser*) that the said (*name of the defendant*) had any right, title, or interest in said estate at the time aforesaid.

IN WITNESS WHEREOF, I, the said                      in my said capacity of deputy sheriff, have hereunto set my hand and seal, this                      day of                      in the year of our Lord one thousand eight hundred and

(*Signature.*)                      (*Seal.*)

Signed, sealed, and delivered in presence of                      :

ss. 18 . Then the above-named personally appeared, and acknowledged the above instrument by him signed to be his free act and deed. Before me,

*Justice of the Peace.*

(41.)

SHERIFF'S TAX-DEED, IN USE IN THE WESTERN STATES.

KNOW ALL MEN BY THESE PRESENTS, That whereas, at the term, A.D. 18 of the Court of county, a judgment was obtained in said court, in favor of the State of against the following-described lot , piece , or parcel of land, for the sum herein specified, to wit, the sum of (*here state in writing the amount of the tax*); said sum being the whole amount of taxes, interest, and costs assessed upon said lot , piece , or parcel of land, for the year 18

And whereas, on the day of A.D. 18 (*name of the collector of taxes*), then collector of taxes of the county aforesaid, by virtue of a precept or order issued out of the Court of the county aforesaid; dated the day of A.D. 18 and directed to the said as aforesaid, did expose at public sale, at the court-house, in the county aforesaid, in conformity with all the requirements of the statutes in such case made and provided, the said lot , tract , or parcel of land above described, for the satisfaction of the judgment so rendered, as aforesaid. And whereas, at the time and place aforesaid (*name of the purchaser*), of the county of and State of having offered to pay the aforesaid sum, amounting to the sum of dollars and cents, for the (*here state what part or portion of the land was sold*) of said lot , piece , or parcel of land, as follows, to wit, the sum of dollars cents, which was the least quantity of said lot , piece , or parcel of land bid for, the said lot , tract , or parcel of land was stricken off to (*name of the purchaser*) at that price. And whereas, the said purchaser has now made and delivered to me an affidavit of having complied with all the requirements of the statute and constitution of the State of necessary to entitle said purchaser to a deed for the premises so sold to him as aforesaid; and whereas the said (*name of the purchaser*) has duly assigned the certificate of purchase of the land above described unto (*the name of the grantee*): Now, therefore, I, sheriff of the county of for and in consideration of the said above-named sum, amounting to the sum of dollars and cents, paid to (*the collector of taxes*), of said county of by the said (*the name of the purchaser*), at the time of the aforesaid sale, and in consideration of (*the amount of costs and fees*) 100 dollars to me paid by said (*name of grantee*), and by virtue of the statute in such case made and provided, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said (*name of the grantee*), his heirs and assigns, the premises so sold as aforesaid, situated in the county of and State of to wit (*here describe carefully the land or premises*

*granted, by metes and bounds, and contents or quantity, or boundary marks or monuments).*

TO HAVE AND TO HOLD unto him, the said (*the name of the grantee*), heirs and assigns, for ever, subject, however, to all the rights of redemption provided by law.

IN WITNESS WHEREOF, I, \_\_\_\_\_ sheriff as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and affixed my seal, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_

(Signature.) (Seal.)

Sheriff of \_\_\_\_\_ County.

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

I, \_\_\_\_\_ in and for said county and State, do certify that sheriff of said county, who is personally known to me to be the real person who executed and subscribed his name to the foregoing deed, appeared before me this day, and acknowledged that he had executed the same as such sheriff, freely and voluntarily, for the uses and purposes therein set forth.

In attestation whereof, I have hereunto set my hand and attached the seal of our said court, at my office in \_\_\_\_\_ in said \_\_\_\_\_ county and State, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_

(Signature.) Clerk. (Seal.)

(42.)

#### DEED OF EXECUTOR, IN USE IN THE EASTERN STATES.

KNOW ALL MEN BY THESE PRESENTS, That whereas (*name of the executor*), in the county of \_\_\_\_\_ and State of \_\_\_\_\_ executor of the last will of (*name of the testator*), late of \_\_\_\_\_ deceased, by an order of the Court of Probate, held \_\_\_\_\_ at \_\_\_\_\_ within and for the county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ was licensed and empowered to sell and pass deeds to convey certain real estate of the said deceased; and whereas, \_\_\_\_\_ the said executor having given public notice of the intended sale, by causing notifications thereof to be published once a week, for three successive weeks, prior to the time of sale, in the newspaper called the \_\_\_\_\_ printed at \_\_\_\_\_ and having first taken the oath and given the bond by law in such cases required, did on the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ pursuant to the order and notice aforesaid, sell by public auction the real estate of the said deceased hereinafter described, to (*name, residence, and occupation of the purchaser*), for the sum of \_\_\_\_\_ dollars  $\frac{1}{100}$ , he being the highest bidder therefor.

NOW, THEREFORE, KNOW YE, That I, the said \_\_\_\_\_ executor as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of \_\_\_\_\_ dollars  $\frac{1}{100}$ , paid by the said (*name of purchaser*), the receipt whereof is hereby acknowl-

edged, do, by these presents, give, grant, sell, and convey unto the said *(here describe carefully the land or premises granted, by metes and bounds, and contents or quantity, or boundary marks or monuments, and refer to the deed of the land to the testator, under which he held it)*.

TO HAVE AND TO HOLD the afore-granted premises, with all the privileges and appurtenances to the same belonging, to him, the said *(name of purchaser)*, and his heirs and assigns, to his and their use and behoof for ever. And I, the said *(name of executor)*, for myself and my heirs, executors, and administrators, do hereby covenant with the said *(name of purchaser)*, and his heirs and assigns, that in pursuance of the order aforesaid, I gave public notice of the said intended sale, in manner aforesaid, and that I took the oath and gave the bond by law required, previous to fixing on the time and place of sale.

IN WITNESS WHEREOF, I, the said \_\_\_\_\_ executor as aforesaid,  
have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_  
in the year of our Lord one thousand eight hundred and sixty-  
(Signature.) (Seal.)

Signed, sealed, and delivered in presence of

ss. A.D. 186 \_\_\_\_\_ Then personally appeared the  
above-named \_\_\_\_\_ execut and acknowledged the foregoing  
instrument to be \_\_\_\_\_ free act and deed.  
Before me, \_\_\_\_\_

Justice of the Peace.

(43.)

#### DEED OF EXECUTOR, IN USE IN THE MIDDLE STATES.

THIS INDENTURE, Made the \_\_\_\_\_ day of \_\_\_\_\_ in the year  
one thousand eight hundred and \_\_\_\_\_ between *(name of executor)*,  
executor of the last will of *(name and residence of testator)*, of the first  
part, and *(name, residence, and occupation of the purchaser, who is the*  
*grantee)*, of the second part, Witnesseth, that the said party of the first  
part, by virtue of the power and authority to him given in and by the  
said last will and testament, and for and in consideration of the sum of  
\_\_\_\_\_ lawful money of the United States of America, to him in  
hand paid at or before the ensealing and delivery of these presents, by the  
said party of the second part, the receipt whereof is hereby acknowledged,  
and the said party of the second part, his heirs, executors, and adminis-  
trators, for ever released and discharged from the same by these presents,  
have granted, bargained, sold, aliened, released, conveyed, and confirmed,  
and by these presents do grant, bargain, sell, alien, release, convey, and  
confirm, unto the said party of the second part, and his heirs and assigns,  
for ever, all *(here describe carefully the land or premises granted, by metes and*  
*bounds, and contents or quantity, or boundary marks, or monuments, and refer*  
*to the deed of the land to the testator, under which he held it)*.

TOGETHER with all and singular the edifices, buildings, rights, mem-  
bers, privileges, advantages, hereditaments, and appurtenances to the same  
belonging or in any wise appertaining; and the reversion and reversions,



remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, claim, and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party of the first part hath, by virtue of the said last will and testament, or otherwise, of, in, and to the same, and every part and parcel thereof, with the appurtenances: To have and to hold the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof for ever. And the said party of the first part, for himself and for his heirs, executors, and administrators, does for himself and for his heirs, executors, and administrators, covenant, grant, promise, and agree to and with the said party of the second part, and his heirs and assigns, that the said party of the second part, his heirs and assigns, shall and lawfully may from time to time, and at all times for ever hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy all and singular the said hereditaments and premises hereby granted and conveyed, or intended so to be, with their and every of their appurtenances, and receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, suit, hinderance, molestation, interruption, or denial whatsoever, of, from, or by them the said party of the first part, his heirs or assigns; or of, from, or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim hereafter, by, from, or under him, or by, from, or under his right, title, interest, or estate. And that free and clear, and freely and clearly discharged, acquitted, and exonerated, or otherwise well and sufficiently saved, defended, kept harmless, and indemnified by them, the said party of the first part, his heirs and assigns, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, judgments, and all other charges and incumbrances whatsoever, had, made, committed, executed, or done by him the said party of the first part, or by, through, or with his acts, deeds, means, consent, procurement, or privity.

IN WITNESS WHEREOF, The parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

(Signature of party of the first part.) (Seal.)

(Signature of party of the second part.) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY. } ss.

This day personally appeared before the undersigned (*name and office of the magistrate*), within and for the county and State aforesaid (*name of the executor*), executor of the estate of (*name of deceased*), deceased, who personally known to me to be the person whose name as such is subscribed to the foregoing deed, as having executed the same, and acknowledged that he had as such executor subscribed to the foregoing deed, as

having executed the same, and acknowledged that he had as such executor executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal,  
at my office in said county, this                      day of                      A.D. 18  
(Signature.)                      (Seal.)

(44.)

# DEED OF ADMINISTRATOR OF INTESTATE.

THIS INDENTURE, Made this                      day of                      in the year  
of our Lord one thousand eight hundred and                      between (name  
and residence of administrator), administrator of the goods and estate of  
(name of intestate), of                      who died intestate, party of the first  
part, and (name, residence, and occupation of the grantee), of the county  
of                      and State of                      party of the second part:

WHEREAS, at the                      term, A.D. 18                      of the                      court,  
within and for the county of                      and State of                      in a certain  
petition or cause therein pending, in which the said (name of the grantor),  
administrator of the goods and estate of (name of the deceased), deceased,  
was petitioner, and (names of the defendants who are minor children of the  
deceased, and of the widow of deceased, and of the guardian of the minors),  
were defendants, the following order and decree were rendered, that is to  
say:

STATE OF

COUNTY. } ss.

In                      Court                      Term, A.D. 18

(Name of the administrator), administrator of the goods and estate of  
(name of deceased), deceased, vs. (names of the defendants, who should be  
the widow and heirs of the deceased).

And now comes the petitioner by his solicitor, and presents his petition  
herein, and it satisfactorily appearing to the court that the defendants have  
been duly served with summons herein by the sheriff of                      county,  
and that the defendants are non-residents of the State of                      and  
have been duly notified of this proceeding by publication as required by  
law, it is therefore ordered by the court that the said defendants be  
called. And they, being three times solemnly called, came not, nor any  
one for them, but herein failed and made default, which it ordered to be  
entered of record; and it further appearing to the court that the said  
(names of defendants who are minors), are minors, and have a guardian, to  
wit, the said (name of the guardian). And afterwards the said (name of  
guardian), as such guardian, comes and files his answer herein, neither  
admitting nor denying the allegations in said petition contained, but re-  
serving the right of said minor by requiring proof. And this cause having  
been brought on to be heard upon the petition herein taken as confessed by  
the answer of said guardian                      and the exhibits and proofs, and

the testimony of (*name of the witness or witnesses called in the case*), witness, duly sworn, who testified herein in open court, and it satisfactorily appearing to the court from the evidence that the said (*name of the deceased*) departed this life on or about the                      day of                      A.D. 18 leaving (*name of his widow*) his widow, and (*names of his children*), his children and only heirs at law; that the petitioner herein was duly appointed administrator of the goods and estate of said (*name of deceased*), deceased, and that letters of administration were duly granted to him by this court, bearing date on the                      day of                      A.D. 18 and the court having ascertained that said petitioner as aforesaid has made a just and true account of the condition of the estate of said deceased to this court, and that the personal estate of said deceased is not sufficient for the payment of the debts of the said (*name of the deceased*), deceased; and the court having found the amount of the deficiency aforesaid to be the sum of                      dollars, besides interest and costs, and it further appearing to the court that the said (*name of the deceased*) died seized of the following-described real estate, situate in the county of                      and State of                      to wit (*here describe carefully the land or premises granted, by metes and bounds, and contents or quantity, or boundary marks, or monuments, and refer to the deed of the land to the deceased, under which he held it*), and the court having ascertained that it will be necessary to sell the said real estate to pay the deficiency aforesaid, with the expenses of administration now due and to accrue; it is therefore ordered, adjudged, and decreed, that the said petitioner proceed, according to law, to advertise and make sale of the real estate above described, or so much thereof as may be necessary to pay the debts now due from said estate, and the costs of administration now due and to accrue. And it is ordered and decreed by the court, that said sale shall be made on the following terms, viz. (*here set forth the terms, place, time, and manner of the sale, as prescribed in the decree*), which terms shall be distinctly set forth in all the advertisements of said sale.

It is further ordered that upon such a sale being made, said (*name of said administrator*) shall make and execute to the purchaser or purchasers of said real estate, good and sufficient deed or deeds to convey the interest of said deceased therein at the time of his decease, and that said (*name of the administrator*) report his action in the premises with all convenient speed. And it is further ordered, that his cause stand continued for said report.

AND WHEREAS, in pursuance of said order and decree, the said party of the first part did on the                      day of                      A.D. 18 between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of such day, at (*place of sale*), expose to sale by public vendue, to the highest bidder, the lands and real estate so ordered to be sold in said decree, having first given notice of the time, terms, and place of such sale, with a description of such lands and real estate, according to the terms and requirements of said order and decree, and of the statute regulating such sales, as will more fully and at large appear by the report of such sale, made by said party of the first part, as administrator as aforesaid, to the said court.

AND WHEREAS, at such sale, the said party of the second part became the purchaser of the following-described lands and real estate, being the highest bidder therefor, at the following price: that is to say (*here state what part, or the whole, of the above-described lands were sold, and at what price*).

NOW, THEREFORE, This indenture witnesseth, that the said party of the first part, by virtue of the order and decree aforesaid, and in consideration of the premises, and for the further consideration of the sum of dollars, to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, the lands and real estate last above described as having been sold to the said party of the second part, to have and to hold the same with all the appurtenances thereunto belonging or in any wise appertaining, to the only proper use, benefit, and behoof of the said party of the second part, and his heirs and assigns, for ever. And the said party of the first part, for the consideration aforesaid, covenants with the said party of the second part, and his heirs and assigns, that he has in all respects complied with the order and decree aforesaid, and with the directions of the law generally in such case made and provided.

IN WITNESS WHEREOF, The said party of the first part, as administrator as aforesaid, has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Administrator of (*name of deceased*) as aforesaid.

In presence of

STATE OF

COUNTY. } ss.

This day personally appeared before the undersigned, within and for the county and State aforesaid, \_\_\_\_\_ executor of the estate of (*name of deceased*), deceased, who \_\_\_\_\_ personally known to me to be the person whose name as such is subscribed to the foregoing deed, as having executed the same, and acknowledged that he had as such executor subscribed to the foregoing deed, as having executed the same, and acknowledged that he had as such executor executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, at my office in said county, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18  
(Signature.) (Seal.)

(45.)

#### DEED-POLL OF GUARDIAN OF A MINOR.

KNOW ALL MEN BY THESE PRESENTS, That whereas (*name of guardian and grantor*), of \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_

guardian of (*name of the ward*), a minor child of (*name of the father of the minor*), by an order of the Probate Court, held at within and for county of on the day of in the year one thousand eight hundred and was licensed and empowered to sell and pass deeds to convey certain real estate of the said minor; and whereas, I, the said guardian, having given public notice of the intended sale, by causing notifications thereof to be published once a week, for three successive weeks, prior to the time of sale, in the newspaper called the printed at and having first taken the oath and given the bond by law in such cases required, did on the day of in the year one thousand eight hundred and pursuant to the order and notice aforesaid, sell by public auction the real estate of the said minor hereinafter described, to (*the name, residence, and occupation of the purchaser and grantee*), for the sum of dollars 100, he being the highest bidder therefor.

NOW, THEREFORE, KNOW YE, That I, the said (*name of the guardian and grantor*), guardian as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of dollars 100 to me paid by the said the receipt whereof is hereby acknowledged, do, by these presents, give, grant, sell, and convey unto the said (*name of the purchaser and grantee*) a certain lot or parcel of land, situated, bounded, and described as follows (*here describe the premises as directed in Form 19*).

TO HAVE AND TO HOLD the afore-granted premises, with all the privileges and appurtenances to the same belonging, to him the said (*purchaser's name*) and his heirs and assigns, to his and their use and behoof for ever. And I, the said (*name of guardian*), for myself, my heirs, executors, and administrators, do hereby covenant with the said (*name of purchaser*), and his heirs and assigns, that in pursuance of the order aforesaid, I gave public notice of the said intended sale, in manner aforesaid, and that I took the oath by law required, previous to fixing on the time and place of sale, and gave the bond previous to said sale.

IN WITNESS WHEREOF, I, the said guardian as aforesaid, have hereunto set my hand and seal, this day of in the year of our Lord one thousand eight hundred and

(*Signature.*) (*Seal.*)

Signed, sealed, and delivered in presence of

ss. A.D. 18 Then personally appeared the above-named guardian, and acknowledged the foregoing instrument to be free act and deed.

Before me,

Justice of the Peace.

(46.)

# DEED OF REFEREE ON FORECLOSURE, IN USE IN THE MIDDLE STATES.

THIS INDENTURE, Made the one thousand eight hundred and

day of in the year between (*name and residence*)

of the referee and grantor), a referee duly appointed as, hereinafter mentioned, of the first part, and (name, residence, and occupation of the grantee), of the second part.

WHEREAS, At a term of the (name of the court) court, on the day of one thousand eight hundred and it was among other things ordered and adjudged by the said court, in a certain action then pending in the said court, between (names of plaintiff and defendant in the action).

That all and singular the mortgaged premises mentioned in the complaint in said action, and in said judgment described, or so much thereof as might be sufficient to raise the amount due to the plaintiff for principal, interest, and costs in said action, and which might be sold separately, without material injury to the parties interested, be sold at public auction, according to the course and practice of said court, by or under the direction of the said party of the first part as referee thereby, duly appointed for that purpose: that the said sale be made (*here state the directions in the order of court as to the place and time of the sale*); that the said referee give public notice of the time and place of such sale, according to the course and practice of said court, and that any of the parties in said action might become a purchaser or purchasers on such sale; that the said referee execute to the purchaser or purchasers of the said mortgaged premises, or such part or parts thereof as should be sold, a good and sufficient deed or deeds of conveyance for the same:

AND WHEREAS, The said referee, in pursuance of the said judgment of the said court, did on the day of one thousand eight hundred and sell at public auction at (*the place of sale*) the premises in the said judgment mentioned, due notice of the time and place of such sale being first given, agreeably to the said judgment; at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of dollars, that being the highest sum bidden for the same. Now this indenture witnesseth, that the said referee, the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the judgment of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money, so bidden as aforesaid, being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey, unto the said party of the second part, the premises aforesaid, situate, bounded, and described as follows (*describe here the premises sold, as directed in Form 19*).

TO HAVE AND TO HOLD all and singular the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to and for his and their only proper use, benefit, and behoof.

IN WITNESS WHEREOF, The said referee as aforesaid, hath hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY. } ss.

On the                      day of                      one thousand eight hundred and  
                                  before me came                      known to me to be the individual  
 described in, and who executed, the above conveyance, and acknowledged  
 that he executed the same.

(Signature).

(47.)

## DEED OF COLLECTOR OF TAXES.

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, I (*name of collector*), of                      in the county of                      and State of                      collector of taxes for said town of                      duly chosen and qualified at the last annual meeting of the inhabitants of said town, held on the                      day of                      last past                      sends greeting:

WHEREAS, The assessors of said town of (*name of the town*), in their list of assessments committed to me, the said (*name of the collector*), to collect, have assessed (*name of the party for whose taxes the land is sold*), a resident owner of a certain tract of land situated in said                      bounded and described as follows, viz. (*describe the premises as directed in Form 19*), the sum of (*amount of tax*) and  $\frac{\text{---}}{100}$  dollars, as a tax on said premises for the year eighteen hundred and

AND WHEREAS, I, the said (*name of the collector*), have demanded payment of said tax of (*name of party taxed*) more than fourteen days before proceeding to advertise and sell as hereinafter set forth.

AND WHEREAS, The said (*name of the party taxed*) has given no written authority to any inhabitant of said town, as his attorney, to pay the tax imposed on said land, and no mortgagee of said land has given written notice to the clerk of said town, that he the said mortgagee holds a mortgage thereon, nor given written authority to any inhabitant of said town, as his attorney, to pay said tax.

AND WHEREAS, I, the said                      having given public notice of the time and place of sale of the said land, for the non-payment of said tax, by an advertisement thereof three weeks successively in the newspaper called the                      printed and published in                      in said county, the last publication of said advertisement being one week before the time of said sale: also by posting a like notice on said land three weeks before the time of said sale: and also by posting a like notice (*here state whatever other places the notice was posted at*), being two public places in said town, three weeks before the time of said sale, which notices severally contained the name of the said (*name of the party taxed*) and the amount of the tax assessed on said land; also a substantially accurate description of said land, did, on the                      day of                      instant, pursuant to the authority and notice aforesaid, no person appearing to pay said tax, and it being the opinion of me that the said land could not be conveniently divided and a part thereof set off without injury to the residue, and judging it to be most for the public interest to sell the whole of said land, sell, at public auction,

the said land above described, to (*name of purchaser and grantee*), for the sum of                      and 100 dollars, he being the highest bidder therefor.

NOW, THEREFORE, KNOW YE, That I, the said (*name of the collector*), by virtue of the authority in me vested as aforesaid, and in consideration of the aforesaid sum of                      and 100 dollars, to me paid by the said (*name of the purchaser*), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said                      all that said tract or parcel of land above mentioned and described, with the appurtenances thereto belonging.

TO HAVE AND TO HOLD the same to him, the said grantee, his heirs and assigns, to his and their use and behoof for ever; subject, nevertheless, to the right of redemption, according to law.

And I, the said grantor, do covenant with the said grantee, his heirs and assigns, that in making the said sale as above set forth, I have complied with, observed, and obeyed all the provisions of law for the sale of real estate for the non-payment of taxes.

IN WITNESS WHEREOF, I, the said                      collector, have hereto set my hand and seal, this                      day of                      in the year eighteen hundred and                     

(Signature.) (Seal.)

Executed and delivered in the presence of

STATE OF                      }  
COUNTY.                      } ss.

A.D. 18

Then personally appeared the above-named                      collector, and acknowledged the above instrument to be his free act and deed.

Before me,

*Justice of the Peace.*

(48.)

#### DEED OF ASSIGNEE, IN USE IN THE WESTERN STATES.

THIS INDENTURE, Made this                      day of                      in the year of our Lord one thousand eight hundred and                      (A.D. 18                      ) between (*name, residence, and occupation of the assignee, who is the grantor*), as assignee of (*name, residence, and occupation of the assignor*), of the one part, and (*name, residence, and occupation of the purchaser, who is grantee*), of the other part:

WHEREAS, The said (*name of the assignor*) being lawfully seised in his demesne, as of fee, among other things, of and in a certain lot, piece, or parcel of ground, situate in the county of                      and State of                      known and described as follows, to wit (*here describe the premises, as in Form 19*). And being so thereof seised, did, on or about the day of                      in the year one thousand eight hundred and (A.D. 18                      ), enter into a written contract with the said party of the second part for the sale of the above-described premises for the sum of                      dollars.



AND WHEREAS, The said (*name of the assignor*) did, by his certain deed of assignment, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_ grant, bargain, sell, alien, remise, release, convey, assign, transfer, and set over (with other property) the above-described lot, piece, or parcel of ground unto the said party of the first part, his successors, executors, administrators, and assigns, for ever; in trust, nevertheless, to and for the uses and intent and purposes in said deed of assignment mentioned and set forth, reference thereto being had may fully and at large appear; which said deed of assignment is recorded in book \_\_\_\_\_ page \_\_\_\_\_ of deeds, in the office of the clerk of the Circuit Court of said county, and *ex-officio* recorder of deeds.

AND WHEREAS, The said assignor \_\_\_\_\_ did not comply with the said contract before the execution and delivery of the said deed of assignment to the said party of the first part.

NOW THIS INDENTURE WITNESSETH, That the said (*name of the assignee and grantor*), assignee of said (*name of the assignor*), for and in consideration of the sum of \_\_\_\_\_ dollars (being the balance of the purchase-money and interest due on said contract), unto him in hand paid by the said party of the second part, at and before the ensembling and delivery hereof, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, alien, release, and confirm unto the said party of the second part, and his heirs and assigns, all the above mentioned and described lot, piece, or parcel of ground, together with all and singular the rights, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, property, claim, and demand whatever, that he, the said assignor, had and held at and immediately before the execution and delivery of the said deed of assignment to said party of the first part, and also all the right, title, interest, property, claim, and demand whatever, that the said party of the first part acquired in, under, or by virtue of the said deed of assignment by said assignor, to him the said party of the first part. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, either in law or equity, that said assignor had and held at the time of and immediately preceding the execution and delivery of said deed of assignment to the said party of the first part, and all the right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns, for ever.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(*Signature of assignee.*) (Seal.)

STATE OF \_\_\_\_\_

\_\_\_\_\_ }  
COUNTY. ) ss.

I, \_\_\_\_\_ a \_\_\_\_\_ in and for said county, in the State aforesaid, do hereby certify that \_\_\_\_\_ who is personally known to me as the real person whose name is subscribed to the within deed, appeared

before me this day in person, and acknowledged that he executed and delivered the said deed, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this day of  
in the year of our Lord one thousand eight hundred and  
(A.D. 18 ).  
(Signature.) (Seal.)

(48\*.)

# ACKNOWLEDGMENT OF GRANTOR AND WIFE BEFORE COMMISSIONER FOR ANOTHER STATE.

STATE OF }  
COUNTY OF } ss.

BE IT REMEMBERED, That on the day of one  
thousand eight hundred and before me, commis-  
sioner for the State of (*name of the State of which he is commissioner*), resi-  
dent in the of duly appointed, commissioned, and  
sworn to take acknowledgments and proof of deeds and other writings in  
the State of to be used or recorded in the said State of (*name  
of the State of which he is commissioner*), and to administer oaths and affir-  
mations, and to take depositions in the said State of to be used  
within the said State of appeared (*name of grantor*) and (*name  
of wife of grantor*) his wife, who are satisfactorily proven to me to be the  
individuals described in, and who executed the within deed, from said  
(*name of grantor*), and wife to (*name of grantee*), by the oath of (*witnesses  
to their identity*), who being by me duly cautioned and sworn, deposed that  
he knew them, the individuals then present, to be the persons described in  
and who executed the within deed. The said and  
his wife, then and there acknowledged to me that they executed the said  
deed for the purposes therein mentioned; and the said (*name of the wife*)  
being examined by me privily, and apart from her said husband, and the  
contents and effect of the said deed being by me first duly explained to  
her, did then and there acknowledge that she executed the same for the  
purposes therein mentioned, freely and without compulsion of or from her  
said husband.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal  
of my office, on the day of in the year of our Lord  
one thousand eight hundred and  
(Signature.) (Seal.)

(49.)

# A PROMISSORY NOTE, TO BE SECURED BY MORTGAGE.

18

for value received promise to pay to  
dollars, at with interest at the rate of  
per cent per annum

This note is secured by a deed of mortgage of even date herewith, from  
to which is duly stamped according to the internal  
revenue law.

\$

(Signature.)

(50.)

## BOND, TO BE SECURED BY A MORTGAGE.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of obligor*), of  
in the county of and State of am  
held, bound, and obliged unto (*name of obligee*), of in the county  
of and State of in the sum of (*penalty usually  
twice as much as the actual debt*), to be paid to the said (*the obligee*), his  
executors, administrators, heirs, or assigns, and to this payment I hereby  
bind myself, my heirs, executors, and administrators, firmly by these  
presents.

Sealed with my seal, this day of in the  
year

THE CONDITION of the above obligation is such, that if I, the said  
(*name of the obligor*), or my heirs, executors, or administrators, shall pay  
or cause to be paid unto the said (*name of the obligee*) the sum of (*here  
insert the amount of the debt or sum to be secured*), on the day of  
in the year with interest at per cent,  
payable six months from the date hereof, and every six months afterwards,  
until the said sum is paid, then the above obligation shall be void and of  
no effect; and otherwise it shall remain in full force. And I further agree  
and covenant, that if any payment of interest be withheld or delayed for  
days after such payment shall fall due, the said principal sum,  
and all arrearage of interest thereon, shall be and become due immediately  
on the expiration of days, at the option of said (*name of the  
obligee*), or his executors or administrators.

(Signature.) (Seal.)

(Witness.)

(51.)

MORTGAGE WITHOUT POWER OF SALE AND WITHOUT WARRANTY,  
BUT WITH RELEASE OF HOMESTEAD AND OF DOWER.

THIS INDENTURE, Made this day of in the  
year of our Lord one thousand eight hundred and sixty- between  
(*name, residence, and occupation of mortgagor*), and (*name of wife*), wife of  
said (*name of mortgagor*), parties of the first part, and (*name, residence,  
and occupation of mortgagee*), party of the second part.

WHEREAS, The said party of the first part is justly indebted to the said  
party of the second part, in the sum of secured to be paid by  
a certain promissory note (or bond) (*describe the note or bond*).

NOW, THEREFORE, THIS INDENTURE WITNESSETH, That the said parties  
of the first part, for the better securing the payment of the money afore-  
said, with interest thereon, according to the tenor and effect of the said

note (or bond) above mentioned; and also in consideration of the further sum of one dollar to us in hand paid by the said party of the second part, at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, for ever, all that (*here describe the premises, as directed in Form 19*).

TO HAVE AND TO HOLD THE SAME, Together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, or in any wise appertaining. And also all the estate, interest, and claim whatsoever, in law as well as in equity, which the parties of the first part have in and to the premises hereby conveyed unto the said party of the second part, and his heirs and assigns, and to their only proper use, benefit, and behoof. And the said parties of the first part hereby expressly waive, release, relinquish, and convey unto the said party of the second part, and his heirs, executors, administrators, and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

PROVIDED ALWAYS, AND THESE PRESENTS ARE UPON THIS EXPRESS CONDITION, That if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay or cause to be paid to the said party of the second part, or his heirs, executors, administrators, or assigns, the aforesaid sum of money, with such interest thereon, at the time and in the manner specified in the above-mentioned note (or bond), according to the true intent and meaning thereof, then in that case these presents and every thing herein expressed shall be absolutely null and void.

IN WITNESS WHEREOF, The said parties of the first part hereunto set their hand and seal the day and year first above written.

(Signature of mortgagor.) (Seal.)

(Signature of wife of mortgagor.) (Seal.)

Signed, sealed, and delivered in presence of

STATE OF }  
COUNTY. } ss.

I, in and for the said county, in the State aforesaid, do hereby certify that (*name of mortgagor*), personally known to me as the same person whose name is subscribed to the foregoing mortgage, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

And the said (*name of wife*), wife of the said (*name of mortgagor*), having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of said instrument of writing having been by me made known and fully explained to her, and she also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily exe-

cuted the same, and relinquished her dower to the lands and tenements herein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of homesteads, voluntarily and freely, and without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal, this                      day of  
A.D. 186    (Signature.)      (Seal.)

(52.)

MORTGAGE WITH POWER OF SALE, TO SECURE A BOND, WITHOUT  
RELEASE OF DOWER.

THIS INDENTURE, Made the                      day of                      in the year  
one thousand eight hundred and                      between (name, residence, and  
occupation of mortgagor), party of the first part, and (name, residence,  
and occupation of mortgagee), party of the second part: Whereas, the said  
(name of mortgagor) is justly indebted to the said party of the second part,  
in the sum of                      lawful money of the United States, secured to be  
paid by a certain bond or obligation bearing even date with these presents,  
in the penal sum of                      dollars, lawful money as aforesaid, condition-  
ed for the payment of the said first-mentioned sum of (here state the  
amount due on the bond, and the time and terms of payment), as by the said  
bond or obligation, and the condition thereof, reference being thereunto  
had, may more fully appear.

NOW THIS INDENTURE WITNESSETH, That the said party of the first  
part, for the better securing the payment of the said sum of money men-  
tioned in the condition of the said bond or obligation, with interest thereon,  
according to the true intent and meaning thereof, and also for and in con-  
sideration of the sum of one dollar to him in hand paid by the said party  
of the second part, at or before the ensealing and delivery of these presents,  
the receipt whereof is hereby acknowledged, has granted, bargained, sold,  
aliened, released, conveyed, and confirmed, and by these presents does  
grant, bargain, sell, alien, release, convey, and confirm, unto the said party  
of the second part, and to his heirs and assigns, for ever, all (here describe  
the premises, as directed in Form 19).

TOGETHER with all and singular the tenements, hereditaments, and  
appurtenances thereunto belonging, or in any wise appertaining, and the  
reversion and reversions, remainder and remainders, rents, issues, and  
profits thereof; and also all the estate, right, title, interest, property, pos-  
session, claim, and demand whatsoever, as well in law as in equity, of the  
said party of the first part, of, in, and to the same, and every part and  
parcel thereof, with the appurtenances: To have and to hold the above  
granted, bargained, and described premises, with the appurtenances, unto  
the said party of the second part, and his heirs and assigns, to his and  
their own proper use, benefit, and behoof for ever.

PROVIDED ALWAYS, and these presents are upon this express condition,  
that if the said party of the first part, or his heirs, executors, or adminis-  
trators, shall well and truly pay unto the said party of the second part, or

his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said (*name of mortgagor*), for himself, and his heirs, executors, and administrators, does covenant and agree to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above, and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, or assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction. And out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be) unto the said (*name of mortgagor*), party of the first part, or his heirs, executors, administrators, or assigns, which sale so to be made shall for ever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

IN WITNESS WHEREOF, The parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

(*Signature of mortgagor.*) (Seal.)

(*Signature of mortgagee.*) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY OF

} ss.

On the                      day of                      in the year one thousand eight hundred and                      before me personally came (*names of both parties*), who are known to me to be the individuals described in, and who executed, the foregoing instrument, and acknowledged that they executed the same:

(*Signature.*)

(53.)

MORTGAGE TO SECURE A DEBT, WITH POWER OF SALE. SHORT FORM.

THIS INDENTURE, Made the                      day of                      in the year one thousand eight hundred and                      between (*name, residence, and occu-*

*pation of mortgagor*), party of the first part, and (*name, residence, and occupation of mortgagee*), party of the second part, witnesseth, that the said party of the first part, in consideration of the sum of (*the amount of the debt*) to him duly paid before the delivery hereof, has bargained and sold, and by these presents does grant and convey, to the said party of the second part, and his heirs and assigns, for ever, all (*here describe the premises, as directed in Form 19*), with the appurtenances, and all the estate, right, title, and interest of the said party of the first part therein.

THIS GRANT is intended as a security for the payment of (*here describe the debt*), which payments, if duly made, will render this conveyance void. And if default shall be made in the payment of the principal or interest above mentioned, then the said party of the second part, or his executors, administrators, or assigns, are hereby authorized to sell the premises above granted, or so much thereof as will be necessary to satisfy the amount then due, with the costs and expenses allowed by law.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Sealed and delivered in the presence of

STATE OF

COUNTY OF

} ss.

On the                      day of                      in the year one thousand eight hundred and                      before me personally came (*name of mortgagor*), who is known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same, as his free act and deed.

(Signature.)

(54.)

# MORTGAGE TO SECURE A DEBT. FULLER FORM, WITH POWER OF SALE.

THIS INDENTURE, Made the                      day of                      in the year one thousand eight hundred and                      between (*name, residence, and occupation of mortgagor*), party of the first part, and (*name, residence, and occupation of the mortgagee*), party of the second part:

WHEREAS, The said party of the first is justly indebted to the said party of the second part in (*here describe the amount and terms of the debt, or note, or bond*).

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the debt (*or note, or bond*)-above described, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained,

sold, aliened, remised, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to his heirs and assigns, for ever, all (*here describe the premises, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof with the appurtenances: To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, and his heirs and assigns, to his and their own proper use, benefit, and behoof for ever.

PROVIDED ALWAYS, And these presents are upon this express condition, that if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay to the said party of the second part, or his heirs, executors, administrators, or assigns, the above-described debt (*or note, or bond*), according to the terms and tenor thereof, then this deed (*and also said debt, or note, or bond*) shall be wholly discharged and void; and otherwise shall remain in full force and effect. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns, therein, at public auction, according to the act in such case made and provided. And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said debt (*or note, or bond*), together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be), unto the said party of the first part, or his heirs, executors, administrators, or assigns; which sale, so to be made, shall for ever be a perpetual bar, both in law and equity, against the said party of the first part, or his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under him, them, or either of them.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

(*Signature of mortgagor.*)      (*Seal.*)

(*Signature of mortgagee.*)      (*Seal.*)

Sealed and delivered in the presence of



STATE OF

COUNTY OF

} ss.

On the                      day of                      in the year one thousand eight hundred and                      before me personally came (*names of both parties*), who are known to me to be the individuals described in, and who executed, the foregoing instrument, and acknowledged that they executed the same.

(Signature.)

(55.)

DEED-POLL OF MORTGAGE, WITH POWER TO SELL AND INSURANCE  
CLAUSE, AND RELEASE OF DOWER AND HOMESTEAD.

KNOW ALL MEN BY THESE PRESENTS, That I (*name, residence, and occupation of mortgagor*), in consideration of                      to me paid by (*name, residence, and occupation of mortgagee*), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said (*name of mortgagee*) all that lot or parcel of land, with all the buildings thereon standing, situated in the town (*or city*) of                      county of                      State of                      and bounded and described as follows; that is to say (*here describe the premises, as directed in Form 19*).

TO HAVE AND TO HOLD the afore-granted premises, with the privileges, easements, and appurtenances thereto belonging, to the said grantee, and to his heirs and assigns, to their use for ever.

And I, the said grantor, for myself and my heirs, executors, and administrators, do covenant with the said grantee, and his heirs and assigns, that I am lawfully seised in fee of the afore-granted premises; that they are free from all incumbrances (*if any incumbrance exists, say "except as follows," and describe the incumbrance*); that I have good right to sell and convey the same to the said grantee, and his heirs and assigns as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee, and his heirs and assigns, for ever, against the lawful claims of all persons.

PROVIDED, NEVERTHELESS, That if the said grantor, or his heirs, executors, or administrators, shall pay unto the said grantee, or his executors, administrators, or assigns, the sum of                      dollars  $\frac{100}{100}$ , in                      days (*or months*) from the day of the date hereof, with interest on said sum at the rate of                      per centum per annum, payable (*semi-annually*), and until such payment keep the buildings standing on the land aforesaid insured against fire, in a sum not less than                      dollars, for the benefit of said mortgagee, and payable to him in case of loss, at some insurance office approved by said mortgagee; or, in any default thereof, shall on demand pay to said mortgagee all such sums of money as the said mortgagee shall reasonably pay for such insurance, with interest, and also pay all taxes levied or assessed upon the said premises, then this deed, as also (*a certain bond or*) a certain promissory note, bearing even date with these presents, signed by the said mortgagor, whereby for

value received he promises to pay the said mortgagee or his order the said sum and interest, at the time aforesaid, shall both be absolutely void to all intents and purposes.

But if default shall be made in the payment of the money above-mentioned, or the interest that may grow due thereon, or of any part thereof, then it shall be lawful for the said grantee, or his executors, administrators, or assigns, to sell and dispose of all and singular the premises hereby granted or intended to be granted, and all benefit and equity of redemption of the said (*name of the mortgagor*), the grantor, his heirs, executors, administrators, or assigns therein, at public auction; such sale to be on or near the premises hereby granted; first giving notice of the time and place of sale, by publishing the same once each week, in three successive weeks, in (*name of the newspaper*), a newspaper printed in the county of aforesaid; and in his or their own names, or as the attorney of the said (*name of mortgagor*), the grantor, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance for the same in fee-simple; and out of the money arising from such sale, to retain the said sum of                      dollars, or the part thereof remaining unpaid, and also the interest then due on the same, together with the costs and charges of advertising and selling the same premises; rendering the surplus of the purchase-money, if any there be, over and above said sum and interest as aforesaid, together with a true and particular account of said sale and charges, to the said (*name of the mortgagor*), the grantor, his heirs, executors, administrators, or assigns; which sale, so to be made, shall for ever be a perpetual bar, both in law and equity, against the said (*name of the mortgagor*), the grantor, and his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them.

AND PROVIDED, ALSO, That until some breach of the condition of this deed, the grantee shall have no right to enter and take possession of the premises, and hold the same.

IN WITNESS WHEREOF, We, the said (*name of mortgagor*) and (*name of his wife*), wife of the said (*name of mortgagor*), in token of her release of all right and title of or to both dower and homestead in the granted premises, have hereunto set our hands and seals, this                      day of                      in the year of our Lord eighteen hundred and

(*Signature of mortgagor.*)                      (*Seal.*)

(*Signature of wife of mortgagor.*)                      (*Seal.*)

Executed and delivered in presence of

ss.

18

Then personally appeared the above-named                      and acknowledged the above instrument to be                      free act and deed.

Before me,

*Justice of the Peace.*



profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof for ever.

PROVIDED ALWAYS, And these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said (*name of the mortgagor*), for himself and his heirs, executors, and administrators, does covenant and agree to pay unto the said party of the second part, or his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, or his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns, therein, at public auction, according to law. And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be), unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale, so to be made, shall for ever be a perpetual bar, both in law and equity, against the said party of the first part, and his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under him or them, or either of them.

AND IT IS EXPRESSLY AGREED by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurers approved by the said party of the second part, and in an amount approved by the said party of the second part, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged

premises added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with interest at the rate of per cent per annum.

IN WITNESS WHEREOF, The parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

(Signature of mortgagor.) (Seal.)

(Signature of mortgagee.) (Seal.)

Sealed and delivered in the presence of

STATE OF                    }  
                                  } ss.  
COUNTY. }

On the                    day of                    in the year one thousand eight hundred and                    before me personally came                    who are known by me to be the individuals described in, and who executed the foregoing instrument, and                    acknowledged that they executed the same as their free act and deed.

(Signature.)

(57.)

#### MORTGAGE TO EXECUTORS, WITH POWER OF SALE

THIS INDENTURE, Made the                    day of                    in the year one thousand eight hundred and                    between (*name, residence, and occupation of the mortgagor*), party of the first part, and (*name and residence of the mortgagee*), executor of the last will and testament of (*name and residence of the testator*), deceased, of the second part; whereas, the said party of the first part is justly indebted to the said party of the second part in the sum of                    lawful money of the United States of America, secured to be paid by a certain bond or obligation bearing even date with these presents, in the penal sum of                    lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum (*state the terms of the payment; and if the bond was made to the testator, state that*), as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm, unto the said party of the second part, and his successors and assigns, for ever, all (*here describe carefully the land or premises granted, as directed in Form 19*).\*

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his successors and assigns, to their only proper use, benefit, and behoof for ever. Provided always, and these presents are upon this express condition, that if the said party of the first part, or his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, or his successors or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be null and void. And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant and agree to pay unto the said party of the second part, his successors or assigns, the said sum of money and interest, as mentioned above, and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his successors and assigns, to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, or his heirs, executors, administrators, or assigns therein, at public auction, according to law. And as the attorney or attorneys of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same, in fee-simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, his heirs, executors, administrators, or assigns; which sale, so to be made, shall for ever be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

(Signature.) (Seal.)

(Signature.) (Seal.)

Signed, sealed, and delivered in the presence of

STATE OF

COUNTY: } ss.

On the                      day of                      in the year one thousand eight hundred and                      before me personally came                      who are known by me to be the individuals described in, and who executed the foregoing instrument, and                      acknowledged that they executed the same as their free act and deed.

(Signature.)

(58.)

## MORTGAGE OF A LEASE.

THIS INDENTURE, Made the                      day of                      in the year one thousand eight hundred and                      between (*name, residence, and occupation of mortgagor*), party of the first part, and (*name, residence, and occupation of mortgagee*), party of the second part; Whereas, (*name, residence, and occupation of the lessor of the lease to be mortgaged*), did, by a certain indenture of lease, bearing date the                      day of                      in the year one thousand eight hundred and                      demise, lease, and to farm let, unto the said party of the first part, and to his executors, administrators, and assigns, all and singular the premises hereinafter mentioned and described, together with their appurtenances. To have and to hold the same unto the said party of the first part, and to his executors, administrators, and assigns, for and during and until the full end and term of                      years, from the                      day of                      and fully to be complete and ended, yielding and paying therefor unto the said (*name of the lessor*), and to his heirs, executors, administrators, or assigns, the yearly rent or sum of (*state the rent, and the times or terms of the payments*).

AND WHEREAS, The said party of the first part is justly indebted to the said party of the second part in the sum of                      dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of                      dollars, lawful money as aforesaid, conditioned for the payment of the said first-mentioned sum of (*here give the amount of the debt to be paid*), as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

NOW THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, and set over, and by these presents does grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, the estate or premises leased and transferred by said indenture of lease, that is to say (*here describe the premises in the same manner in which*

*they are described in the lease*); together with all and singular the edifices, buildings, rights, members, privileges, and appurtenances thereunto belonging, or in any wise appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and every clause, article, and condition therein expressed and contained.

TO HAVE AND TO HOLD the said indenture of lease, and other hereby granted premises, unto the said party of the second part, his executors, administrators, and assigns, to his and their only proper use, benefit, and behoof, for and during all the rest, residue, and remainder of the said term of years yet to come and unexpired; subject, nevertheless, to the rents, covenants, conditions, and provisions in the said indenture of lease mentioned. Provided always, and these presents are upon this express condition, that if the said party of the first part shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then and from thenceforth these presents, and the estate hereby granted, shall cease, determine, and be utterly null and void, any thing hereinbefore contained to the contrary in any wise notwithstanding. And the said party of the first part does hereby covenant, grant, promise, and agree to and with the said party of the second part, that he shall well and truly pay unto the said party of the second part the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And that the said premises hereby conveyed now are free and clear of all incumbrances whatsoever, and that the said party of the first part has good right and lawful authority to convey the same in manner and form hereby conveyed. And if default shall be made in the payment of the said sum of money above mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said party of the second part, and his assigns, to sell, transfer, and set over all the rest, residue, and remainder of the said term of years then yet to come, and all other the right, title, and interest of the said party of the first part, of, in, and to the same, at public auction, according to the act in such case made and provided: and as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, to make, seal, execute, and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer, or other conveyance in the law, for the same premises, with the appurtenances; and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the overplus of the purchase-money (if any there shall be) unto the said party of the first part, or his assigns; which sale, so to be made, shall be a perpetual bar, both in law and equity, against the said party of the first part, and



against all persons claiming or to claim the premises, or any part thereof, by, from, or under him or them, or any of them.

IN WITNESS WHEREOF, The said party of the first part to these presents has hereunto set his hand and seal, the day and year first above written.

(Signature.) (Seal.)

Signed, sealed, and delivered in the presence of

STATE OF

COUNTY OF

} ss.

On the                      day of                      in the year one thousand eight hundred and                      before me personally came                      who is known to me to be the individual described in, and who executed, the foregoing instrument, and                      acknowledged that he executed the same as his free act and deed.

(Signature.)

(59.)

#### MORTGAGEE'S DEED, UNDER A POWER OF SALE.

THIS INDENTURE, Made this                      day of                      in the year of our Lord one thousand eight hundred and                      between (*name and occupation of the mortgagee*), of the county of                      and State of                      party of the first part, and (*name and occupation of the grantee*), of the county of                      and State of                      of the second part.

WITNESSETH, That whereas (*name and occupation of the owner and mortgagor who gave to the mortgagee the power now exercised*), of the county of                      and State of                      did, by a certain deed, dated the                      day                      A.D. 18                      which deed is recorded in the recorder's office of the county of                      in the State of                      on the                      day of                      A.D. 18                      in book                      of                      at page                      grant, sell, and convey to the said party of the first part all the premises                      hereinafter described, to secure the payment of a certain debt (*or note, or bond*) in said deed particularly mentioned, and upon certain terms in said deed particularly declared; and whereas default hath been made in the payment of said debt (*note or bond*), the said premises were, by said party of the first part, duly advertised for public sale at the                      door of the court-house                      in the county of                      and State of                      on the                      day of                      A.D. 18                      in the manner prescribed by said deed, and were, upon the day and year and at the place last mentioned aforesaid, in pursuance of said notice, sold at public sale, and at said sale the said party of the second part was the highest and best bidder therefor, and bid for the tract first hereinafter named, the sum of                      dollars.

Now, THEREFORE, These presents witness, that the said party of the first part, in pursuance of the power and authority in him vested in and by the said deed, and in consideration of the sum of                      dollars,

to the said party of the first part paid by the said party of the second part. the receipt whereof is hereby acknowledged, hath released and quit-claimed, and doth hereby convey, remise, release, and quitclaim, to the said party of the second part, his heirs and assigns, for ever, all the right, title, and interest, as well in law as in equity, which the said party of the first part hath acquired by virtue of the deed above mentioned, of, in, and to all that certain tract, piece, or parcel of land, situated in the county of \_\_\_\_\_ and State of \_\_\_\_\_ and described as follows, to wit (*here describe the premises, as directed in Form 19*).

TOGETHER with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances, which the said party of the first part acquired by virtue of said deed.

TO HAVE AND TO HOLD the aforesaid right, title, and interest of the said party of the first part, unto the said party of the second part, his heirs and assigns, for ever, as full and absolutely as the said party of the first part can, by virtue of the power and authority in him by said deed vested, convey the same.

IN WITNESS WHEREOF, The party of the first part hath hereto set his hand and seal, the day and year first above written.

(Signature of seller.) (Seal.)

Signed, sealed, and delivered in presence of

STATE OF \_\_\_\_\_ }  
COUNTY. } ss.

On the \_\_\_\_\_ day of \_\_\_\_\_ eighteen hundred and sixty-  
before me \_\_\_\_\_ of the county of \_\_\_\_\_ in the State  
of \_\_\_\_\_ appeared \_\_\_\_\_ who is personally known to me to be  
the real person whose name is subscribed to the foregoing instrument of  
writing, as having executed the same, and then acknowledged the execu-  
tion thereof as his free act and deed, for the uses and purposes herein  
mentioned.

(Signature.)

(60.)

#### ASSIGNMENT OF MORTGAGE. SHORT FORM.

KNOW ALL MEN BY THESE PRESENTS, That I (*name, residence, and occupation of the assignor*), the mortgagee named in a certain mortgage deed, given by (*name, residence, and occupation of the mortgagor*), to said (*name of assignor*), to secure the payment of \_\_\_\_\_ dollars  $\frac{100}{100}$ , dated the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord eighteen hundred and \_\_\_\_\_ recorded in the \_\_\_\_\_ registry of deeds for the county of \_\_\_\_\_ lib. \_\_\_\_\_ fol. \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ dollars  $\frac{100}{100}$  to me paid by (*name, residence, and occupation of*



IN WITNESS WHEREOF, I have hereunto set my hand and seal, the  
day of                      one thousand eight hundred and sixty-

(Signature.)      (Seal.)

Signed, sealed, and delivered in the presence of

STATE OF                      }  
COUNTY.                      } ss.

On this                      day of                      eighteen hundred and sixty-  
personally appeared before me                      known to me to be the person  
who signed and sealed the foregoing assignment of mortgage, and acknowl-  
edged the execution of the same for the uses and purposes therein set  
forth.

Given under my hand and seal, at                      in said county aforesaid.

(Signature)      (Seal.)

(62.)

#### ASSIGNMENT OF MORTGAGE BY A CORPORATION.

KNOW ALL MEN BY THESE PRESENTS, That the (*legal name of the corporation assigning*), existing as a corporate body, in and under the laws of the State of                      of the first part, for and in consideration of the sum of                      lawful money of the United States, to the said corporation paid by (*name, residence, and occupation of assignee*), of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date the                      day of                      one thousand eight hundred and                      made by (*here state the name of the mortgagor, and briefly describe the mortgage deed*), the same being duly registered in the office of the register of deeds for the county of                      and State of                      to which said indenture of mortgage reference may be had.

TOGETHER with the bond or obligation therein described, and the moneys due, and to grow due thereon, with the interest: to have and to hold the same unto the said party of the second part, his heirs and assigns, for his and their own use, subject only to the proviso in the said indenture of mortgage mentioned. And the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their true and lawful attorney, irrevocable, in the name of the said parties of the first part, or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and in case of payment to discharge the same as fully as the said parties of the first part might or could do if these presents were not made.

IN WITNESS WHEREOF, The said parties of the first part have caused their common seal to be affixed to these presents, and the same to be signed by their attorney and president (or other officer), the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal of the corporation.)

Signed, sealed, and delivered in presence of

STATE OF \_\_\_\_\_ }  
COUNTY. } ss.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ before me came \_\_\_\_\_ with whom I am personally acquainted, and known to me to be the attorney and \_\_\_\_\_ of the within-named corporation, who, being by me duly examined, says, that the seal which is affixed to the within assignment is the corporate seal of the said corporation, and was so affixed by their authority, and acknowledged that he executed the same as their act and deed.

(Signature.)

(63.)

#### DISCHARGE OF MORTGAGE. SHORT FORM.

THE DEBT secured by the mortgage, dated \_\_\_\_\_ and recorded with \_\_\_\_\_ deeds, lib. \_\_\_\_\_ fol. \_\_\_\_\_ has been paid to me by (name of mortgagor), and in consideration thereof I do discharge the mortgage and release the mortgaged premises to said (name of mortgagor) and his heirs.

WITNESS my hand and seal \_\_\_\_\_ A.D. 18 \_\_\_\_\_

(Signature.) (Seal.)

Executed and delivered in presence of

ss. \_\_\_\_\_ A.D. 186 \_\_\_\_\_ Then said \_\_\_\_\_ acknowledged the foregoing instrument to be \_\_\_\_\_ free act and deed.

Before me,

(Signature.)

(64.)

#### RELEASE AND QUITCLAIM OF MORTGAGE, AS USED IN THE WESTERN STATES.

KNOW ALL MEN BY THESE PRESENTS, That I (name of mortgagee), of the county of \_\_\_\_\_ and State of \_\_\_\_\_ for and in consideration of one dollar, to me in hand paid, and for other good and valuable considerations, the receipt whereof is hereby confessed, do hereby grant, bargain, remise, convey, release, and quitclaim unto (name of assignee or releasee), of the county of \_\_\_\_\_ and State of \_\_\_\_\_ all the right, title, interest, claim, or demand whatsoever I may have acquired in,

through, or by a certain indenture or mortgage deed, bearing date the  
 • day of A.D. 186 and recorded in the recorder's  
 office of county in book of page  
 to the premises therein described, and which said deed was made  
 to secure a certain promissory note (*or bond*) bearing even date with said  
 deed, for the sum of dollars and cents.

WITNESS my hand and seal, this day of  
 A.D. 186

(Signature.) (Seal.)

STATE OF }  
 COUNTY. } ss.

I, in and for said county in the State aforesaid, do hereby  
 certify that who is personally known to me as the same person  
 whose name is subscribed to the foregoing deed, appeared before me this  
 day in person, and acknowledged that he signed, sealed, and delivered the  
 said instrument of writing as his free and voluntary act, for the uses and  
 purposes therein set forth.

Given under my hand and seal, this day of A.D. 186  
 (Signature.) (Seal.)

(65.)

# DISCHARGE OF MORTGAGE, AS USED IN THE MIDDLE STATES.

STATE OF }  
 COUNTY OF } ss.

I (*name, residence, and occupation of mortgagee*), do hereby certify that  
 a certain indenture (*or deed*) of mortgage, bearing date the day  
 of one thousand eight hundred and made and executed  
 by (*here state the name of the mortgagor, and describe the deed briefly*), and  
 recorded in the office of county of in lib.  
 of mortgages, page on the day of in the  
 year one thousand eight hundred and o'clock, in the  
 is paid. And I do hereby consent that the same be discharged of record.

Dated the day of 18  
 (Signature.) (Seal.)

In presence of

STATE OF }  
 COUNTY OF } ss.

On the day of in the year one thousand eight  
 hundred and before me personally came who is known  
 to me to be the individual described in, and who executed, the foregoing  
 instrument, and acknowledged that he executed the same as his free act  
 and deed.

(Signature.)

(66.)

## DISCHARGE AND SATISFACTION OF MORTGAGE BY A CORPORATION.

WE (*the legal name of the corporation*), a corporate body existing within and under the laws of the State of

DO HEREBY CERTIFY, That a certain mortgage, bearing date the  
day of in the year one thousand eight hundred and  
made and executed by (*here state the name of the mortgagor,*  
*and describe the mortgage briefly*), and recorded in the office of the register  
in and for the county of in lib. of mort-  
gages, page on the day of is paid.

IN WITNESS WHEREOF, The said corporation has caused its corporate  
seal to be hereunto affixed, this day of in the year  
one thousand eight hundred and

(*Signature of attorney.*) (*Seal of corporation.*)

Witnessed by

STATE OF

COUNTY OF

} ss.

On the day of in the year one thousand eight  
hundred and before me personally came to me known,  
who, being by me duly sworn, did depose and say, that he resided in the  
city (*or town*) of that he is the attorney and president (*or other*  
*officer*) of the said corporation; that he knew the corporate seal of the said  
corporation, and that the seal affixed to the foregoing instrument was such  
corporate seal; that it was affixed by him by order of the said corporation,  
and that he signed his name thereto by the like order.

(*Signature.*)

(67.)

## RELEASE OF A PART OF THE MORTGAGED PREMISES.

THIS INDENTURE, Made the day of in the year  
of our Lord one thousand eight hundred and between (*name,*  
*residence, and occupation of the mortgagee and releasor*), party of the first  
part, and (*name, residence, and occupation of the mortgagor to whom the*  
*release is given*), party of the second part:

WHEREAS, The said party of the second part, by indenture of mort-  
gage, bearing date the day of one thousand eight  
hundred and for the consideration therein mentioned, and to  
secure the payment of the money therein specified, did convey certain lands  
and tenements, of which the lands hereinafter described are part, unto the  
said party of the first part,

AND WHEREAS, The said party of the first part, at the request of the  
said party of the second part, has agreed to give up and surrender the  
lands hereinafter described unto the said party of the second part, and to

hold and retain the residue of the mortgaged lands as security for the money remaining due on the said mortgage: Now this indenture witnesseth, that the said party of the first part, in pursuance of the said agreement, and in consideration of to him duly paid at the time of the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, released, quitclaimed, and set over, and by these presents does grant, release, quitclaim, and set over, unto the said party of the second part, all that part of the said mortgaged land (*here describe carefully and accurately all that part of the mortgaged land which it is intended to release, distinguishing it from that which is retained*).

TOGETHER with the hereditaments and appurtenances thereto belonging, and all the right, title, and interest of the said party of the first part, of, in, and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said party of the first part as heretofore. To have and to hold the lands and premises hereby released and conveyed to the said party of the second part, and his heirs and assigns, to his and their only proper use, benefit, and behoof, for ever, free, clear, and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

IN WITNESS WHEREOF, The said party of the first part has hereunto set his hand and seal, on the                      day of                      in the year                      . (Signature.) (Seal.)

Executed and delivered in presence of

STATE OF                      }  
COUNTY OF                      } ss.

On the                      day of                      in the year one thousand eight hundred and                      before me personally came                      who is known to me to be the individual described in, and who executed, the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

(Signature.)

(68.)

#### DEED EXTENDING A MORTGAGE.

THIS INDENTURE, Made this                      day of                      A.D. 18                      by and between (*name, residence, and occupation of the mortgagee*), the owner and holder of a certain promissory note (*or bond*) for the principal sum of                      dollars, given by (*name of mortgagor*), and secured by a mortgage of certain real estate in                      in the county of                      and State of                      dated                      day                      A.D. 18                      and recorded in                      registry of deeds, for the county of                      lib.                      fol.                      party of the first part, and the said (*name of mortgagor*), party of the second part,



WITNESSETH, That the said parties, for themselves and their representatives, hereby mutually agree that the time for the payment of the principal of said note and mortgage debt shall be and the same is hereby extended for the term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18\_\_\_\_ and that the same is to bear interest from said date, at the rate of \_\_\_\_\_ per cent per annum, payable on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ in every year, until said principal sum shall be fully paid.

And the said party of the second part hereby covenants and agrees that he will not require the holders of said note and mortgage to receive payment of said mortgage debt during said extended term; that he will punctually pay the interest now due, and to grow due thereon, at the times and at the rate aforesaid; that he will keep the mortgaged premises in good repair, and insured against fire, and the taxes thereon duly paid, according to the provisions of said mortgage, and that at the expiration of said extended term he will pay the said mortgage debt, with all interest then due thereon.

It is expressly understood and agreed that nothing herein contained shall be construed to impair the security of said party of the first part, or his executors, administrators, or assigns, under said mortgage, or to affect or impair the lien on the real estate therein described, which he has by virtue of said mortgage, nor affect or impair any rights or powers which he may have under the said note and mortgage, for the recovery of the mortgage debt, with interest, in case of non-fulfilment of this agreement, or of any of the provisions hereof, by said party of the second part.

IN WITNESS WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of mortgagee.) (Seal.)

(Signature of mortgagor.) (Seal.)

Signed, sealed, and delivered in presence of

COMMONWEALTH (or State) OF \_\_\_\_\_ ss. 18 Per-  
sonally appeared the above-named \_\_\_\_\_ and acknowledged the  
above instrument to be his (or their) free act and deed.

Before me,

(Signature.)

## CHAPTER VI.

# PURCHASE AND SALE OF GOODS AND CHATTELS.

### SECTION I.

#### WHAT CONSTITUTES A SALE.

It is important to distinguish carefully between a sale and an agreement for a future sale. This distinction is sometimes overlooked; and hence the phrase "an executory contract of sale," that is, a contract of sale which is to be executed hereafter, has come into use; but it is not quite accurate to speak of this as if it were a sale. Every actual sale is an executed contract, although payment or delivery may remain to be made. There may be an executory contract *for* a sale, or a bargain that a future sale shall be made; but such a bargain is not a present sale, nor does it confer upon either party the rights or the obligations which grow out of the contract of sale.

A sale of goods is the exchange thereof for money. More precisely, it is the transfer of the property in goods from a seller to a buyer, for a price paid, or to be paid, in money. It differs from an exchange, in law; for that is the transfer of chattels for other chattels; while a sale is the transfer of chattels for money, which is the representative of all value.

Here we must pause to speak of the legal meaning of the word "property." It is seldom or never used in the law, as it is in common conversation, to mean the things themselves which are bought, or sold, or owned. Because in law it means the *ownership* of the things, and not the things themselves.

If a bargain transfers the property in (which means the ownership of) the thing to another person for a price, it is a sale; and if it does not transfer the property, it is not a sale; and, on the other hand, if it be not a sale, it does not transfer the property. As soon as a thing is *sold*, the buyer *owns* it, wherever it may be. And to constitute a sale at common law, all that is necessary is the agreement of the buyer and the seller that the property in (or ownership of) the subject-matter shall then pass from the seller to the buyer for a fixed price.

The sale is made when the agreement is made. The completion of the sale does not depend upon the delivery of the goods by the seller, nor upon the payment of the price by the buyer. By the mutual assent of the parties to the terms of the sale, the buyer acquires at once the property and all the rights and liabilities of property; so that, in case of any loss or depreciation of the articles purchased, the buyer will be the loser; and he will be the gainer by any increase in their value.

It is, however, a presumption of the law, that the sale is to be immediately followed by payment and delivery, unless otherwise agreed upon by the parties. If, therefore, nothing appears but a proposal and an acceptance, and the vendee departs without paying or tendering the price, the vendor may elect to consider it no sale, and may, therefore, if the buyer comes at a later period and offers the price and demands the goods, refuse to let him have them. But a credit may be agreed on expressly, and the seller will be bound by it; and so he will be if the credit is inferred or implied from usage or from the circumstances of the case. And if there be a delivery and acceptance of the goods, or a receipt by the seller, of earnest, or of part payment, the legal inference is that both parties agree to hold themselves mutually bound by the bargain. Then the buyer has either the credit agreed upon, or such credit as from custom or the nature or circumstances of the case is reasonable. But neither delivery nor earnest nor part payment is essential to the completion of a contract of sale. They only prevent the seller from rescinding the contract of sale without the consent of the purchaser. Their effect upon sales under the provisions of the Statute of Frauds will be considered in the chapter on that subject.

No one can be made to buy of another without his own assent. Thus, if A sends an order to B for goods, and C sends the goods, he cannot sue for the price if A repudiates the sale, although C had bought B's business.

The seller (if no delivery with credit for the price is agreed on) has a right to retain possession of the property sold until the price is paid. This right is called a *lien*, which means the right of retaining possession of property until some charge upon it, or some claim on account of it, is satisfied. It rests, therefore, on possession. Hence the seller (and every other person who has a *lien*) loses it by voluntarily parting with the possession or by a delivery of the goods. And it is a delivery for this purpose if he delivers a part, without any purpose of severing that part from the remainder; or if he make a symbolical delivery which vests this right and power of possession in the buyer, as by the delivery of the key of a warehouse in which they are locked up.

If the seller delivers the goods to the buyer, as he thereby loses his lien, he cannot afterwards, by virtue of this lien, retake the goods and hold them. But if the delivery was made with an express agreement that non-payment of the price should revest the property in the seller, this agreement may be valid, and the seller can reclaim the goods from the buyer if the price be not paid.

If the buyer neglect or refuse to take the goods and pay the price within a reasonable time, the seller may resell them on notice to the buyer, and look to him for the deficiency by way of damages for the breach of the contract. The seller, in making such resale, acts as agent or trustee for the buyer; and his proceedings will be regulated and governed by the rules usually applicable to persons acting in those capacities; and the principal one of these is, that he will be held to due care and diligence, and to perfect good faith.

Certain consequences flow from the rules and principles already stated, which should be noticed. Thus, if the party to whom the offer of sale is made accepts the offer, but still refuses or neglects to pay the price, and there are no circumstances indicating a credit, or otherwise justifying the refusal or neglect, the seller may, as we have said, disregard the acceptance of his offer, and consider the contract as never made, or as rescinded. It would, however, be proper and prudent on the part of the seller expressly to demand payment of the price before he treated the sale as null; and a refusal or neglect would then give him at once a right to hold and treat the goods as his own. So, too, if the seller unreasonably neglected to deliver the goods sold, and especially if he refused to deliver them, the buyer thereby acquires the right to consider that no sale was made, or that it has been avoided (or annulled). But neither party is bound to exercise the right thus acquired by the refusal or neglect of the other, which is a right to rescind or annul the sale, but may consider the sale as complete; and the seller may sue the buyer for non-payment, or the buyer may sue the seller for non-delivery.

If the seller has merely the right of possession, as if he had hired the goods; or if he has the possession only, as if he had stolen them, or found them, he cannot sell them and give good title to the buyer against the owner; and the owner may therefore recover them even from an honest purchaser who was wholly ignorant of the defect in the title of him from whom he bought them. This follows from the rule above stated, that only he who has in himself a right of property can sell a chattel, because the sale must transfer the right of property from the seller to the buyer. The only exception to the above rule is where money, or negotiable paper transferable by delivery (which is considered as money), is sold or

paid away. In either case, he who takes it in good faith, and for value, from a thief or finder, holds it by good title. If the owner once sold the thing, although he was deceived and induced to part with his property through fraud, he cannot reclaim it from one who in good faith buys it from the fraudulent party who purchased it from the owner.

**If any thing remains to be done by the seller, to or in relation to the goods sold, for their ascertainment, identification, or completion, the property in the goods does not pass until that thing is done; and until then there is no completed sale.** Therefore, if there be a bargain for the sale of specific goods, but there remains something material which the seller is to do to them, and they are casually burnt or stolen, the loss is the seller's, because the property (or ownership) had not yet passed to the buyer.

**So, if the goods are a part of a large quantity, they remain the seller's until selected and separated; and even after that, until recognized and accepted by the buyer, unless it is plain from words or circumstances that the selection and separation by the buyer are intended to be conclusive upon both parties.**

**If repairing or measuring or counting must be done by the seller, before the goods are fitted for delivery or the price can be determined or their quantity ascertained, they remain, until this be done, the seller's.** And where part is measured and delivered, this part passes to the vendee, but the portion not so treated does not. But if the seller delivers them and the buyer accepts them, and any of these acts remain to be done, these acts will not be considered as belonging to the contract of sale, for that will be regarded as completed, and the ownership of the goods will have passed to the buyer; and these acts will be taken only to refer to the adjustment of the final settlement as to the price.

**Thus a purchaser offers a nursery-man a dollar apiece for two hundred out of a row of two thousand trees, which are all alike, and the offer is accepted.** This is no sale, because any two hundred may be delivered, and therefore the property or ownership of any specific two hundred does not pass. But if the purchaser or seller had said, the first two hundred in the row, or the last, or every third tree, or otherwise indicated the specific trees, there would have been a sale, and by the sale those specific trees would have become at once the trees of the buyer. The seller would dig up and deliver them as the buyer's trees, and if they were burned up by accident an hour after the sale, and before digging, the buyer would lose the trees. If not specified, however, even if they were paid for, they remain the property of the nursery-man, because, instead of an actual sale, there is only a bargain that he will select two hundred from the lot, and

take up and deliver them. And if they are destroyed before delivery, this is the loss of the nursery-man.

Moreover, it is to be noticed that a contract for a future sale, to take place either at a future point of time, or when a certain event happens, does not, when that time arrives, or on the happening of the event, become of itself a sale, transferring the property. The party to whom the sale was to be made does not then acquire the property, and cannot, by tendering the price, acquire a right to possession; but he may tender the price, or whatever else would be the fulfilment of his obligation, and demand the goods, and then sue the owner for his breach of contract if he will not deliver the goods. But the property (or legal title) in the goods remains in the original owner.

For the same reason that the property in the goods must pass by a sale, there can be no actual sale of any chattel or goods which have no existence at the time. It may, as we have seen, be a good contract for a future sale, but it is not a present sale. Thus, in contracts for the sale of articles yet to be manufactured, the subject of the contract not being in existence when the parties enter into their engagement, no property passes until the chattel is in a finished state, and has been specifically appropriated to the person giving the order, and approved and accepted by him.

As there can be no sale unless of a specific thing, so there is no sale but for a price which is certain, or which is capable of being made certain by a distinct reference to a certain standard.

## SECTION II.

### DELIVERY AND ITS INCIDENTS.

When a sale is effected, the buyer has an immediate right to the possession of the goods, as soon as he pays or tenders the price; or at once, without payment, if the sale be on credit. And the seller is bound to deliver the goods.

What is a sufficient delivery is sometimes a question of difficulty. In general, it is sufficient if the goods are placed in the buyer's hands or his actual possession, or if that is done which is the equivalent of this transfer of possession. Some modes and instances of delivery we have already seen. We add, that if the goods are landed on a wharf alongside of the ship which brings them, with notice to the buyer, or knowledge on his part, this may be a sufficient delivery, if usage, or the obvious nature of the case, make it equivalent to actually giving possession. And usage is of the utmost importance in determining questions of this kind.

In general, the rule may be said to be, that that is a sufficient delivery which puts the goods within the actual reach or power of the buyer, with immediate notice to him, so that there is nothing to prevent him from taking actual possession.

When, from the nature or situation of the goods, an actual delivery is difficult or impossible, as in case of a quantity of timber floating in a boom, slight acts, as touching the timber, or even going near it and pointing it out, are sufficient to constitute a delivery, if they sufficiently indicate the transfer of possession. So if the property which is the subject of the sale is at sea, the indorsement and delivery of the bill of lading, or other instrument of title, is sufficient to constitute a delivery; and by such indorsement and delivery of the bill of lading the property in the goods immediately vests in the buyer; and he can transfer this to one who buys of him, by his own indorsement and delivery of the bill of lading.

Where goods at sea are sold, the seller should send or deliver the bill of lading to the buyer within a reasonable time, that he may have the means of offering the goods in the market. And it has been held that a refusal of the bill of lading authorized the buyer to rescind the sale.

Until delivery, the seller is bound to keep the goods with ordinary care, and is liable for any loss or injury arising from the want of such care or of good faith. But if he exercises ordinary care and diligence in keeping the commodity, he is not liable for any loss or depreciation of it, unless this arises from some defect which he has warranted not to exist. Thus, in a case in New York, A sold to B a certain quantity of beef, B paying the purchase-money in full; and it was agreed between them that the beef should remain in the custody of A until it should be sent to another place. Some time after, B received a part, which proved to be bad, and the whole was found, on inspection, to be unmerchantable. The court held that, as the beef was good at the time of its sale, the vendee (or buyer) must bear the loss of its subsequent deterioration.

If the buyer lives at a distance from the seller, the seller must send the goods in the manner indicated by the buyer. If no directions are given, he must send them in such a way as usage, or, in the absence of usage, as reasonable care would require. And generally all customary and proper precautions should be taken to prevent loss or injury in the transit. If these are taken, the goods are sent at the risk of the buyer, and the seller is not responsible for any loss. But he is responsible for any loss or injury happening through the want of such care or precaution. And if he sends them by his own servant, or carries them himself, they are in his custody, and, generally, at his risk, until delivery. But if the buyer distinctly indicates

the way or means by which he wishes that the goods should be sent to him, as by such a carrier, or such a line, if the seller complies with his directions, and exercises ordinary care over the goods until they are delivered to the person or line so pointed out, his responsibility ends with this delivery, in the same manner as it would if he delivered the goods into the hands of the owner.

This question of delivery has a very great importance in another point of view; and that is, as it bears upon the honesty, and therefore the validity, of the transaction. As the owner of goods ought to have them in his possession, and as a transfer of possession usually does, and always should, accompany a sale, the want of this transfer is an indication, more or less strong, that the sale is not a real one, but a mere cover. The prevailing rule may be stated thus: Delivery is not essential to a sale at common law; but if there is no delivery, and a third party, without knowledge of the previous sale, purchases the same thing from the seller, he gains an equally valid title with the first buyer; and if he completes this title by acquiring possession of the thing before the other, he can hold it against the other. So, also, unless delivery or possession accompany the transfer of the right of property, the things sold are subject to attachment by the creditors of the seller. And if the sale be completed, and nevertheless no change of possession takes place, and there is no certain and adequate cause or justification of the want or delay of this change of possession, the transaction will be regarded as fraudulent and void in favor of a third party, who, either by purchase or by attachment, acquires the property in good faith, and without a knowledge of the former sale. This fact, that the thing sold remained in the possession of the seller, might be explained, and if shown to be perfectly consistent with honesty, and to have occurred for good reasons, and especially if the delay in taking possession was brief, the title of the first buyer would be respected.

If goods are sold in a shop or store, separated, and weighed or numbered if that be necessary, and put into a parcel, or otherwise made ready for delivery to the buyer, in his presence, and he request the seller to keep the goods for a time for him, this is so far a delivery as to vest the property in the goods in the buyer, and the seller becomes the *bailee* of the buyer. And if the goods are lost while thus in the keeping of the seller, without his fault, it is the loss of the buyer. (In law the word *bail* means "to deliver." Thus a "bailor" is one who delivers a thing to another; the "bailee" is the party to whom it is delivered; and "bailment" is the delivery. The "bail" of a party who is arrested, is he or they to whom the arrested person is delivered or given up, on their agreement that he shall be forthcoming when required by law.)



In a contract of sale there is sometimes a clause providing that a mistake in description or a deficiency in quality or quantity, shall not avoid the sale, but only give the buyer a right to deduction or compensation. But if the mistake or defect be great and substantial, and affects materially the availability of the thing for the purpose for which it was bought, the sale is nevertheless void, for the thing sold is not that which was to have been sold.

If the buyer knowingly receives goods so deficient or so different from what they should have been that he might have refused them, he will be held to have waived the objection, and to be liable for the whole price, unless he can show a good reason for not returning them, as in the case of materials innocently used before discovery of the defects, or the like. Thus, where a man bought a chandelier warranted sufficient to light a certain room, and kept it six months, the court did not permit him to return it and refuse payment, although it was not what it had been warranted to be. Sometimes two or three months, or even less, is held too long a keeping to permit a subsequent return. But though the buyer cannot then return the thing, yet, when the price is demanded, he may set off whatever damages he has sustained by the seller's breach of contract, and the seller can recover only the value to the buyer of the goods sold, even if that be nothing. But a long delay or silence may imply a waiver of even this right on the part of the buyer.

One who orders many things at one time, and by one bargain, may, generally, refuse to receive a part without the rest; but if he accepts any part, he severs that part from the rest, and rebuts (or removes) the presumption that it was an entire contract; the buyer will then be held as having given a separate order for each thing, or part, and as therefore bound to receive such parts as are tendered, unless some distinct reason for refusal attaches to them. If many several things are bought at one auction, but by different bids, and especially if the name of the buyer be marked against each, there is a separate sale to him of each one, and it is independent of the others; so that he must take and pay for any one or more, although the others are not what they should be, or cannot be had. If, however, it could be shown by the nature of the case, or by evidence, that the things were so connected that one was bought entirely for the sake of the other, he would not be obliged to take the one unless he could have the other. This rule applies also when the things sold are lots of land. Indeed, the general rule may be stated thus: The question whether it is one contract, so that the buyer shall not be bound to receive any part unless the whole be tendered to him, will be determined by ascertaining from

all the facts and all the evidence whether the parts so belong together that it may reasonably be supposed that none would have been purchased if the whole had not been purchased, or if any part could not have been purchased.

The buyer may have, by the terms of the bargain, the right of rescinding the sale and redelivering the goods. For sales are sometimes made upon the agreement that the purchaser may return the goods within a fixed or within a reasonable time. He may have this right without any condition, and then has only to exercise it at his discretion. But he may have the right to return the thing bought only if it turns out to have, or not to have, certain qualities; or only upon the happening of a certain event. In such case the burden of proof is on him to show that the circumstances exist which are necessary to give him this right. In either case the property vests in the buyer at once, as in ordinary sales; but subject to the right of return given him by the agreement. If he does not exercise his right within the agreed time, or within a reasonable time if none be agreed upon, the right is wholly lost, the sale becomes absolute, and the price of the goods may be recovered in an action for goods sold and delivered. And if during the time the buyer so misuse the property as to materially impair its value, he cannot tender it back, but is liable for the price.

### SECTION III.

#### CONTRACTS VOID FOR ILLEGALITY OR FRAUD.

As the law will not compel or require any one to do that which it forbids him to do, no contract can be enforced at law which is tainted with illegality. It may, however, be necessary to consider whether the contract be entire or separable into parts, and whether it is wholly or partially illegal. If the whole consideration, or any part of the consideration, be illegal, the promise founded upon it is void, whether the promise is legal or not. But if the consideration is legal, and the promise is in part legal and in part illegal, it is valid for the legal part, and may be enforced for that part. Thus, if a master of a vessel agreed to smuggle goods, and in consideration of his doing so the owner promised to pay him one-fourth of his profits, and also to advance twenty dollars a month to his family during a certain time, the master could enforce no part of this promise, and recover no damages for any breach of it, because the consideration is illegal. But if for one thousand dollars paid, the receiver agreed to sell and deliver a certain quantity of merchandise, and also to assist the buyer in some contemplated

fraud, he would be bound to sell and deliver the goods, because the consideration was legal, and this part of the promise was legal, but not to assist in the fraud, because this part of the promise is illegal. I mean to say, that if a whole promise, or any part, of a promise that cannot be severed into substantial and independent parts, is illegal the whole promise is void. But if the consideration is legal, and the promise is legal in part and illegal in part, and that part of the promise which is legal can be severed from that part which is illegal and then be a substantial promise having a value of its own, this legal part can be enforced. For further remarks upon this subject, however, I refer to the chapter on Consideration.

**Fraud vitiates and avoids every contract and every transaction.** Hence, a wilfully false representation by which a sale is effected; or a purchase of goods with the design of not paying for them; or hindering others from bidding at auction by wrongful means; or selling at auction, and providing buy-bidders, to run the thing up fraudulently; or selling "with all faults," and then purposely concealing and disguising them, as when a man advertised a ship for sale at auction "with all faults," but purposely put her in a situation where an important fault could not be easily detected; or any similar act, — will avoid a sale. No title or right passes by such sale to the fraudulent party; but the innocent party, whether buyer or seller, may waive the fraud, and insist that the fraudulent party shall not take advantage of his own fraud to avoid the sale.

**A buyer who is imposed upon by a fraud, and therefore has a right to annul the sale, must exercise this right as soon as may be after discovering the fraud.** He does not lose the right necessarily by every trifling delay, but certainly does by any considerable and unexcused delay.

**A seller may rescind and annul a sale if he were induced to make it by fraud.** But he may waive the right and sue for the price. If, however, the fraudulent buyer gets the goods on a credit, and the seller sues for the price before the credit expires, this suit is a confirmation of the whole sale, including the credit; or rather it is an entire waiver of his right to annul the sale, and the suit cannot be maintained until the credit has wholly expired.

**If a party who has been defrauded by any contract brings an action to enforce it, this is a waiver of his right to rescind, and a confirmation of the contract.** Or if, with knowledge of the fraud, he offers to perform the contract on conditions which he had no right to exact, this has been held so effectual a waiver of the fraud that he cannot set it up in defence, if sued on the contract.

Formerly, an agreement to sell at a future day goods which the promisor had not at the time, and had not contracted to buy, and had no notice or expectation of receiving by consignment, was considered open to the objection that it was merely a wager, and therefore void. But later cases have admitted it to be a valid contract.

#### SECTION IV.

##### SALES WITH WARRANTY.

A sale may be with warranty; and this may be general, or particular and limited. A general warranty does not extend to defects which are known to the purchaser, or which are open to inspection and observation, unless the purchaser is at the time unable to discover them readily, and relies rather upon the knowledge and warranty of the seller. A warranty may also be either express or implied. It is *not* implied by the law generally merely from a full, or, as it is called, a sound price. The rule of law, *caveat emptor* (*let the buyer take care*), prevents this. But this rule never applies to cases of fraud. As a general rule, however, mere silence on the part of the seller is not fraud; but the usage of the trade will be considered, and if that require a declaration of certain defects whenever they exist, the absence of such declaration is a warranty against such defects. Mere declarations of opinion are not a warranty. Thus, in England, an action was brought on a warranty that certain goods were fit for the China market. The plaintiff produced a letter from the defendant, saying that he had goods fit for the China market, which he offered to sell cheap. But the court held that such a letter was not a warranty, but merely an invitation to trade, it not having any specific reference to the goods actually bought by the plaintiff.

If these declarations are intended to deceive, and have that effect, they may avoid the sale for fraud. And affirmations of quantity or quality, which are made pending the negotiations for sale, with a view to procure a sale, and have that effect, will be regarded as a warranty; thus, in New York, it was held that a representation made by a vendor, upon a sale of flour in barrels, that it was in quality superfine or extra-superfine, and worth a shilling a barrel more than common, coupled with the assurance to the buyer's agent that he might rely upon such representation, was a warranty of the quality of the flour. So in England, where upon the sale of a horse the vendor said to the vendee, "You may depend upon it, the horse is perfectly quiet and free from vice;" this was held to

amount to an express warranty that he was quiet and free from vice.

Goods sold by sample are warranted by such sale to conform to the sample; but there is no warranty that the sample is what it appears to be. Thus, in England, there was a sale of five bags of hops, with express warranty that the bulk answered the samples by which they were sold. The sale was in January; at that time the samples fairly answered to the commodity sold, and no defect was at that time perceptible to the buyer. In July following, every bag was found to have become unmerchantable and spoiled, by heating, caused probably by the hops having been fraudulently watered by the grower or some other person, before they were purchased by the defendant. The seller knew nothing of this fact at the time of sale, and the samples were as much damped as the rest; and it was then impossible to detect it. It was held by the court that there was here no implied warranty that the bulk of the commodity was merchantable at the time of sale, although a merchantable price was given.

A breach of warranty does not always authorize the buyer to return the article sold, unless there be an agreement to that effect, or fraud; but only to sue on the warranty, and recover damages on the breach of it. But if one orders a thing for a special purpose known to the seller, he may certainly return it if it be unfit for that purpose, if he does so as soon as he ascertains its unfitness.

The seller of goods actually in his possession as owner, if he sells *as owner*, is held to warrant his own title by the fact of the sale. But if the property be not in the possession of the vendor, and there be no assertion of ownership by him, no implied warranty of title arises.

If a thing is ordered for a special purpose, and is supplied, there is an implied warranty that it is fit for that purpose. In one case, the defendant was a dealer in ropes, and represented himself to be a manufacturer of the article. The buyer, a wine-merchant, applied to him for a crane-rope. The seller's foreman went to the buyer's premises, in order to ascertain the dimensions and kind of rope required. He examined the crane and the old rope, and took the necessary admeasurements, and was told that the new rope was wanted for the purpose of raising pipes of wine out of the cellar, and letting them down into the street; when he informed the buyer that a rope must be made on purpose. The seller did not make the rope himself, but sent the order to his manufacturer, who employed a third person to make it. It was held that, as between the parties to the sale, there was an implied warranty that the rope was a fit

and proper one for the purpose for which it was ordered. And the seller was held responsible not only for the rope, which broke, but for a pipe of wine which was thereby lost.

This principle must not be applied to those cases where an ascertained article is purchased, although it be intended by the purchaser for a special purpose. For if the thing itself is specifically selected and purchased, the purchaser takes upon himself the risk of its effecting its purpose. This is illustrated in an English case, thus: "If a man says to another, 'Sell me a horse fit to carry me,' and the other sells a horse which he knows to be unfit to ride, he will be liable for the consequences; but if a man says, 'Sell me that gray horse to ride,' and the other sells it, knowing that the buyer will not be able to ride it, that would not make him liable." If he said, "Sell me that gray horse *if* he is fit to ride," and the seller sold it knowing he was not fit, he would be liable.

It has been much discussed whether a bill of sale, describing the article sold, amounts to a warranty that the article conforms to the description. It seems now to be well settled that it does. In a Massachusetts case, there was a bill of sale as follows: "H. & Co. bought of T. W. & Co. *two cases of indigo*, \$272." The article sold was not indigo, but principally Prussian blue. No fraud was imputed to the seller, and the article was so prepared as to deceive experienced and skilful dealers in indigo. The naked question was presented, whether the bill of sale constituted a warranty that the article sold was *indigo*. And the court held that it did. Here the warranty implied by the bill of sale was as to the *kind of goods*. In another case the bill was, "Sold E. T. H. 2,000 gallons *prime quality winter oil*." The thing sold was oil, and winter oil; but not *prime quality*. And the court held that the bill of sale amounted to a warranty that it was of *that quality*. In an English case, a vessel was advertised for sale as "copper fastened;" and this was held to be a warranty that she was so fastened, according to the usual understanding of merchants.

One who sells provisions is always considered in law as warranting that they are good and wholesome.

(69.)

#### BILL OF SALE OF PERSONAL PROPERTY.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of the seller*), in the county of \_\_\_\_\_ for and in consideration of the sum of \_\_\_\_\_ to \_\_\_\_\_ in hand well and truly paid, at or before signing, sealing, and delivery of these presents, by (*name of the buyer*), the receipt whereof

I the said                      do hereby acknowledge, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said

TO HAVE AND TO HOLD the said granted and bargained unto the said                      heirs, executors, administrators, and assigns, to only proper use, benefit, and behoof for ever, and                      the said does vouch himself to be the true and lawful owner of the goods and effects hereby sold, and to have in himself full power, good right, and lawful authority to dispose of the said                      in manner as aforesaid, and I do, for myself, my heirs, executors, and administrators, hereby covenant and agree to warrant and defend the said (*the goods sold*) unto the said                      heirs, executors, administrators, and assigns, against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF,                      the said                      have hereunto set                      hand and seal, this                      day of                      in the year of our Lord one thousand eight hundred and sixty-

Executed and delivered in presence of

(70.)

BILL OF SALE OF PERSONAL PROPERTY, WITH A CONDITION TO  
MAKE IT A MORTGAGE, WITH POWER OF SALE.

KNOW ALL MEN BY THESE PRESENTS, That                      in consideration of                      paid by                      the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer, and deliver unto the said                      the following goods and chattels, namely:

TO HAVE AND TO HOLD all and singular the said goods and chattels to the said                      and                      executors, administrators, and assigns, to their own use and behoof for ever.

And                      hereby covenant with the grantee that                      the lawful owner of the said goods and chattels; that they are free from all incumbrances,                      that                      have good right to sell the same as aforesaid; and that                      will warrant and defend the same against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, That if the grantor                      , or                      executors, administrators, or assigns, shall pay unto the grantee                      , or executors, administrators, or assigns, the sum of                      in                      from this date, with interest semi-annually at the rate of                      per cent per annum, and until such payment shall not waste or destroy the same, nor suffer them or any part thereof to be attached on mesne process; and shall not, except with the consent in writing of the grantee or                      representatives, attempt to sell or to remove from                      the same or any part thereof, — then this deed, as also                      note of even date herewith, signed by the said                      whereby                      promise to pay to the grantee                      or order the said sum and interest at the times aforesaid, shall                      be void.

BUT UPON ANY DEFAULT in the performance of the foregoing condition, the grantee or executors, administrators, or assigns, may sell the said goods and chattels by public auction, first giving days' notice in writing of the time and place of sale to the grantor or representatives. And out of the money arising from such sale the grantee or representatives shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, including all costs, charges, and expenses incurred or sustained by them in relation to the said property, or to discharge any claims or liens of third persons affecting the same, rendering the surplus, if any, to the grantor or executors, administrators, or assigns.

AND IT IS AGREED that the grantee or executors, administrators, or assigns, or any person or persons in their behalf, may purchase at any sale made as aforesaid; and that, until default in the performance of the condition of this deed, the grantor and executors, administrators, and assigns, may retain possession of the above-mortgaged property, and may use and enjoy the same.

IN WITNESS WHEREOF, the said hereunto set hand and seal and affix and cancel the stamp required by law, this day of in the year one thousand eight hundred and

Signed, sealed, and delivered in presence of

## SECTION V.

### THE SALE OF ONE'S BUSINESS.

Such sales are not unfrequent in this country; and the seller always agrees and promises that he will not pursue that trade, business, or occupation again. There are numerous cases, both in English law-books and in our own, which have arisen from bargains of this kind. The law seems now to be settled, that such a contract is wholly void and inoperative, *provided* the seller agrees to give up his business and never resume it again, *at any time or anywhere*; that is, without any limitation of space or time; because it is against the public interest that a man should be permitted to cast himself out from his business or trade for the rest of his life. But the contract is good, if for a fair consideration the seller agrees not to resume or carry on that business within a certain time, or within certain limits. What these limits must be is not certain. The courts say they must be "reasonable," and made in good faith. A contract not to carry on a business in a certain town would undoubtedly be good. So, we should say, would be a bargain not to do so within a certain State. In one case in Massachusetts, a contract not to use certain machines in any of the United States except *two* (which were Massachusetts and Rhode Island) was held valid, all



of the States but two being considered as a sufficiently defined or limited place; but this was unusual. The courts generally would sanction a sale of one's business, if it were limited to only a part of the United States; as to all New England, for example.

In such a contract, it would be better for the parties to agree upon the amount which the seller should pay by way of damages, if he violated his bargain, because it might be very difficult to prove specific damages; and such a bargain, if it were reasonable, would be enforced by law.

Such damages, agreed on beforehand, are called "liquidated damages." In all cases where damages are demanded, and are not agreed on, they are called *unliquidated damages*, and it is the duty of the jury to determine, from the evidence before them, what damages the injured party has suffered, and what amount would indemnify him.

## SECTION VI.

### STOPPAGE IN TRANSITU.

Here is an instance where a Latin phrase has become English, by general adoption and use. *In transitu* means "in the transit," and the English phrase may just as well be used; but the Latin one is used much oftener, at least by lawyers. The whole phrase "stoppage *in transitu*" means, "a stoppage of goods while on their way to the buyer." Thus a seller, who has sent goods to a buyer at a distance, and after sending them learns that the buyer is insolvent, may stop the goods at any time before they reach the buyer. His right to do this is called the right of stoppage *in transitu*.

If the goods are sent to pay a precedent and existing debt of the sender, they are not subject to this right.

The right exists only upon actual insolvency; but this need not be formal insolvency, or bankruptcy at law: an actual inability to pay one's debts in the usual way being enough. If the seller, in good faith, stops the goods, in a belief of the buyer's insolvency, the buyer may at once defeat this stoppage, and reclaim the goods, by payment of the price. So he may, by a tender of adequate security, if the sale be on credit.

The stoppage must be effected by the seller, and evidenced by some act; but it is not necessary that he should take actual possession of the goods. If he gives a distinct notice to the party in possession, whether carrier, warehouseman, middleman, or whoever else, before the goods reach the buyer, this is enough. But a notice of stoppage *in transitu*, to be effectual, must be given either to the

person who has the immediate custody of the goods; or if to the principal whose servant has the custody, then at such a time and under such circumstances as that he may, by the exercise of reasonable diligence, communicate it to his servant in time to prevent the delivery to the consignee.

Goods can be stopped only while in transitu; and they are in transitu only until they come into the possession of the buyer. But this possession need not be actual, a constructive possession by the buyer being sufficient to prevent this stoppage; as, if the goods are placed on the wharf of the buyer, or on a neighboring wharf with notice to him; or in a warehouse with delivery to him of the key or of an order on the warehouseman; in these cases they can no longer be stopped, because the transit is ended.

The entry of the goods at the custom-house, without payment of duties, does not terminate the transit. If the buyer has demanded and marked them at the place where they had arrived on the termination of the voyage or journey, personally or by his agent; or if the carrier still holds the goods, but only as the agent of the buyer,—in all these cases the transit is ended. But if the carrier holds them by a lien for his charges against the buyer, the seller may pay these charges and discharge the lien, and then stop the goods *in transitu*.

If the buyer has, in good faith and for value, sold the goods, "to arrive," before he has received them, and indorsed and delivered the bill of lading to his purchaser, this second purchaser holds the goods free from the first seller's right to stop them. But if the goods and bill are transferred only as security for a debt due from the first purchaser to the transferee, the original seller may stop the goods, and hold them subject to this security, and need pay only the specific advances made on their credit, or on that very bill of lading, and not a general indebtedness of the first purchaser to the second.

A seller who stops the goods in transitu does not rescind the sale, but holds the goods as the *property* of the buyer; and they may be redeemed by the buyer or his representatives, by paying the price for which they are a security; and if not redeemed, they become the seller's, only in the same way as a pledge might become his; that is, he may sell them at a proper time, and in a proper manner, and with due notice, so that the buyer may protect his interests. And if the seller then fails to obtain from them the full price due, he has a claim for the balance upon the buyer. If he gets more than the amount due to him, he must pay over the balance to the buyer or his assignees.

An honest buyer, apprehending bankruptcy, might wish to return the goods to their original owner; and this he could undoubtedly do, if they have not become distinctly his property, and the seller be his creditor for the price. But if they have, the buyer has no more right to benefit this creditor by such an appropriation of these goods, than any other creditor by giving him any other goods.

---

## CHAPTER VII.

### MORTGAGES OF GOODS AND CHATTELS.

Mortgages are now often made of personal property, or goods and chattels. The instrument need not be so formal as a mortgage deed of land. Any instrument will answer the purpose which would suffice as a bill of sale of the property, and which contains, in addition to the words of sale and transfer, a clause providing for the avoidance of it when the debt is paid. I append to this chapter forms for this purpose.

When the mortgagor of personal property retained possession, it was formerly doubtful what security the mortgagee had. Now, however, it is generally provided by statute that the mortgagor may retain possession, if the mortgage be recorded.

These instruments should always be recorded according to the provisions of the statute of the State in which they are made; although the general rule would apply to them, that they would operate without record, as to all parties having notice or knowledge of them.

The statutes respecting mortgages of personal property always provide for an equity of redemption, which is usually very much shorter than that of land. A frequent period is sixty days. The requirements of the statute in respect to notice, foreclosure, &c., must be strictly followed.

It used to be thought that a personal mortgage might be made to cover property subsequently acquired by the mortgagee. Thus, a dealer in dry goods would mortgage all his stock to secure some creditor, and provide in the mortgage that it should operate upon all his goods and merchandise subsequently acquired by him. But it has been held that such a clause has no effect; because no man can make a mortgage of property which he does not own at the time.

## THE PLEDGE OF PERSONAL PROPERTY.

A pledgee (or one to whom a pledge is made) is bound to take ordinary (not extreme) care of the thing pledged; and if it be lost or injured for want of such care, he is answerable.

He cannot use it, except at his own peril; that is, he is liable for any injury caused by using it, even if it was not his fault. If the thing—as a horse—needs use for its own safety, then the pledgee may use it for this purpose, and is liable only for an injury caused by his negligence.

He must account with the pledgor for the income, increase, or profits.

One difference between a mortgagee and a pledgee is this: a mortgagee need not take possession, for the mortgagor may retain it; and now this is provided for, as we have seen, by recording the mortgage. But if a thing is given in pledge, the pledgee must have and keep possession of it.

The most important difference is this: a mortgagee may sell and transfer his mortgage, and his transferee may transfer it again, and so on; and when the debt is paid, the mortgagor reclaims it from whomsoever has it then. But if a pledgee sells the pledge before the debt is due, it is held that he is at once answerable to the pledgor for its full value, although the debt be not paid.

Some cases of this kind have been carried very far in New York. It is held there—and on grounds which may perhaps suffice to make it law everywhere—that if A lends money to B, and takes stocks in pledge, A cannot sell these stocks and keep the proceeds, and replace the stock and return it when the debt is paid. He can do nothing but keep the stock; and if he sells it, the pledgor may recover at once its full value, and the pledgee will have no security for his debt. In such a case, a pledgee, being sued, offered the testimony of brokers and others to prove a uniform and established usage in the city of New York thus to sell or use pledged stock until the debt was paid; but the court said the usage was illegal, and refused to consider the evidence.

It is certain that, after the debt is due and payable, and after demand if it be payable on demand, the pledgee may have a decree in chancery for the sale of the pledge, or may sell it himself, *provided* he first gives a reasonable notice to the pledgor, and then sells it, after a reasonable delay, in a proper manner, by a public sale at auction; and uses all reasonable precautions to get its value, as by advertisement, &c.; and does not buy it himself, directly or indirectly; and conducts himself in all respects honestly; and then he must account for the proceeds.

Sometimes the parties agree, when the pledge is given, or afterwards, how the pledge shall be treated, or how sold if not redeemed, &c.; and such agreements, if fair and reasonable, would undoubtedly be binding on both parties.

It is agreed that negotiable paper is excepted from the common rule; and the pledgee of that may sell or discount it before the debt is due; and must account for it, or its proceeds, if the debt is paid and the paper redeemed, or for the balance if the note is paid to him, and he applies it to payment of the debt.

A loan of stock is not like a pledge of stock, because it authorizes the borrower to sell or pledge it, or use it in any way, at any time; but he must replace and return the same quantity of the same stock, when it is called for. If he could not thus make use of the stock, the loan of it would be of no benefit whatever to the borrower. But he cannot thus use stock pledged to him, unless by a special agreement which permits this use.

A pledgee, who receives a pledge to secure one or more specific debts, cannot retain it to secure other and further debts of the pledgor, unless with his consent. This consent may be express, or implied from words or circumstances which show that such was the understanding of the parties.

#### FORMS ANNEXED TO THIS CHAPTER.

- (71.) A mortgage of personal property.
- (72.) A mortgage of personal property, with warranty.
- (73.) A mortgage of personal property, with a power of sale.
- (74.) A mortgage of personal property, with a power of sale. Another form.

#### (71.)

##### A MORTGAGE OF PERSONAL PROPERTY.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of mortgagor*), of the town of \_\_\_\_\_ county of \_\_\_\_\_ and State of \_\_\_\_\_ for and in consideration of \_\_\_\_\_ dollars, to me in hand paid by (*name of mortgagee*), of the town of \_\_\_\_\_ county of \_\_\_\_\_ and State aforesaid, do sell and convey to the said (*name of mortgagee*) the following goods and chattels, to wit (*list or schedule of the articles, specifying them with sufficient distinctness to make it certain what they are*), warranted free of incumbrance, and against any adverse claims: Upon condition, that if the said (*name of the mortgagor*) pay to the said (*name of the mortgagee*) \_\_\_\_\_ dollars and interest, in \_\_\_\_\_ year, agreeably to a promissory note of this date, for that sum, payable to the said (*name of mortgagee*), or order, on demand, with interest, this deed shall be void; otherwise, in full force and effect.

THE AFORESAID PARTIES AGREE, That, until the condition of this instrument is broken, the said property may remain in possession of the said ( *name of mortgagor* ), but after condition broken the said ( *name of mortgagee* ) may at his pleasure take and remove the same, and may enter into any building or premises of the said ( *name of the mortgagor* ) for that purpose.

WITNESS our hands and seals, this                      day of                      A.D. 18  
     (*Signature of mortgagor.*)     (*Seal.*)  
     (*Signature of mortgagee.*)     (*Seal.*)

Sealed and delivered in presence of

STATE OF \_\_\_\_\_ } ss.  
COUNTY OF \_\_\_\_\_ }

BE IT REMEMBERED, That on this                      day of                      eighteen  
hundred and                      before me, the undersigned, notary public in  
and for said county and State, duly commissioned and qualified, came  
                who is known to me to be the same person whose name is  
subscribed to the foregoing instrument of writing, as party thercto, and  
he acknowledged the same to be his act and deed, for the purpose therein  
mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the city of \_\_\_\_\_ the day and year last aforesaid.

*Notary Public.*

(72.)

A MORTGAGE OF PERSONAL PROPERTY, WITH WARRANTY.

KNOW ALL MEN BY THESE PRESENTS, That I (*name and residence of mortgagor*), in consideration of the sum of \_\_\_\_\_ to me in hand paid by (*name and residence of mortgagee*), the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said (*name of mortgagee*), the following articles of personal property; that is to say (*list or schedule, as in Form 71*).

TO HAVE AND TO HOLD all and singular the said goods and chattels unto the said (*name of the mortgagee*), and his executors, administrators, and assigns, to his and their use for ever. And I, the said mortgagor, for myself and for my executors and administrators, do covenant to and with the said mortgagee, and with his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property; that the same are free from all incumbrances, and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee, his executors, administrators, and assigns, against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, That if the said mortgagor, his executors or administrators, shall well and truly pay unto the said mortgagee, his executors, administrators, or assigns, the sum of \_\_\_\_\_ dollars, in \_\_\_\_\_ months from the date hereof (or on a certain day, stating the day when the

money is to be paid), with interest at                      per cent, then this deed, as also a certain promissory note                      bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void; otherwise, shall remain in full force and virtue.

AND PROVIDED, ALSO, That until default by the said mortgagor, or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached, at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, or his executors or administrators, shall attempt to sell the same, or any part thereof, without notice to the said mortgagee, or his executors, administrators, or assigns, and without his or their assent to such sale in writing expressed, or shall remove the same, or any part thereof, from the place in which they now are, without such notice and assent, then it shall be lawful for the said mortgagee, or his executors, administrators, or assigns, to take immediate possession of the whole of said granted property, to his and their own use.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal, this                      day of                      in the year of our Lord one thousand eight hundred and sixty-

(Signature.)      (Seal.)

Executed and delivered in presence of

(73.)

#### A MORTGAGE OF PERSONAL PROPERTY, WITH A POWER OF SALE.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of mortgagor*), of the town (*or city*) of                      in the county of                      and State of                      in consideration of                      dollars to me paid by (*name of mortgagee*), of the town (*or city*) of                      in the county of                      and State of                      the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell unto the said (*name of mortgagee*) and his assigns, for ever, the following goods and chattels, to wit (*list or schedule, as in Form 71*).

TO HAVE AND TO HOLD all and singular the said goods and chattels unto the mortgagee herein, and his assigns, to their sole use and behoof for ever. And the mortgagor herein, for himself and for his heirs, executors, and administrators, does hereby covenant to and with the said mortgagee and his assigns, that said mortgagor is lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all incumbrances; and that he will warrant and defend the same to him the said mortgagee and his assigns against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, That if the said mortgagor shall pay to the mortgagee, on the                      day of                      in the year

the sum of                      dollars, then this mortgage is to be void; otherwise,  
to remain in full force and effect.

AND PROVIDED, FURTHER, That until default be made by the said mortgagor in the performance of the condition aforesaid, it shall and may be lawful for him to retain the possession of the said goods and chattels, and to use and enjoy the same; but if the same or any part thereof shall be attached or claimed by any other person or persons at any time before payment, or the said mortgagor or any person or persons whatever, upon any pretence, shall attempt to carry off, conceal, make way with, sell, or in any manner dispose of the same or any part thereof, without the authority and permission of the said mortgagee or his executors, administrators, or assigns, in writing expressed, then it shall and may be lawful for the said mortgagee, with or without assistance, or his agent or attorney, or his executors, administrators, or assigns, to take possession of said goods and chattels, by entering upon any premises wherever the same may be, whether in this county or State, or elsewhere, to and for the use of said mortgagee or his assigns. And if the moneys hereby secured, or the matters to be done or performed, as above specified, are not duly paid, done, or performed at the time and according to the conditions above set forth, then the said mortgagee, or his attorney or agent, or his executors, administrators or assigns, may, by virtue hereof, and without any suit or process, immediately enter and take possession of said goods and chattels, and sell and dispose of the same at public or private sale; and after satisfying the amount due, and all expenses, the surplus, if any remain, shall be paid over to said mortgagor or his assigns. The exhibition of this mortgage shall be sufficient proof that any person claiming to act for the mortgagee is duly made, constituted, and appointed agent and attorney to do whatever is above authorized.

IN WITNESS WHEREOF, The said mortgagor has hereunto set his hand and seal, this                      day of                      in the year of our Lord one thousand eight hundred and

(Signature of mortgagor.)      (Seal.)

Signed, sealed, and delivered in presence of

STATE OF }  
COUNTY. } ss.

This mortgage was acknowledged before me, by (the mortgagor), this  
day of                      A.D. 18

(Signature.)

(74.)

A MORTGAGE OF PERSONAL PROPERTY, WITH A POWER OF SALE  
ANOTHER FORM.

KNOW ALL MEN BY THESE PRESENTS, That I (name and residence of mortgagor), in consideration of the sum of \_\_\_\_\_ to me paid by (name and residence of mortgagee), the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bar-



gain, and sell, unto the said (*name of mortgagee*), the following named and described articles of personal property; that is to say (*here follows the list or schedule and description of the articles mortgaged, as in Form 71*).

TO HAVE AND TO HOLD all and singular the said goods and chattels unto the said (*name of mortgagee*), and his executors, administrators, and assigns, to his and their sole use for ever. And I, the said mortgagor, for myself and my executors and administrators, do covenant to and with the said mortgagee and his executors, administrators, and assigns, that I am lawfully possessed of the said goods and chattels, as of my own property; that the same are free from all incumbrances; and that I will, and my executors and administrators shall, warrant and defend the same to the said mortgagee and his executors, administrators, and assigns, against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, That if the said mortgagor, or his executors or administrators, shall well and truly pay unto the said mortgagee, or his executors, administrators, or assigns, the sum of \_\_\_\_\_ then this deed, as also a certain promissory note bearing even date herewith, signed by the said mortgagor, whereby he promises to pay the said mortgagee the said sum and interest at the time aforesaid, shall both be void; and otherwise they shall remain in full force and virtue.

AND PROVIDED, ALSO, That until default by the said mortgagor, or his executors and administrators, in the performance of the condition aforesaid, or of some part thereof, it shall and may be lawful for him or them to keep possession of the said granted property, and to use and enjoy the same; but in case of such default, or if the same or any part thereof shall be attached at any time before payment as aforesaid, by any other creditor or creditors of the said mortgagor, or if the said mortgagor, his executors or administrators, shall attempt to sell the same or any part thereof without notice to the said mortgagee or his executors, administrators, or assigns, and without his or their assent to such sale in writing expressed; or shall remove the same, or any part thereof, from the place where they now are, without such notice and assent, then it shall be lawful for the said mortgagee, his executors, administrators, or assigns, to take immediate possession of the whole of said granted property to his or their own use, and to sell and dispose of the whole or of so much of said granted property at public auction as shall produce a sum of money sufficient to pay and discharge the above-mentioned debt or liability, with interest, and all costs and charges of keeping and selling the same, and all just and equitable liens then existing thereon, without further notice or demand, except giving \_\_\_\_\_ days' notice of the time and place of said sale to said mortgagor or his legal representatives; and after the said debt or liability, with interest, costs, charges, and liens, shall be so discharged and satisfied, the surplus of the money arising from said sale, and the residue of said granted property, shall be paid and restored to said mortgagor or his legal representatives, discharged from all claim under this mortgage.

IN TESTIMONY WHEREOF, I, \_\_\_\_\_ the said (*name of mortgagor*), have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal.)

Executed and delivered in presence of

## CHAPTER VIII.

# LETTING AND HIRING OF REAL PROPERTY.

### LEASES.

A lease is a contract, whereby one party (the tenant) takes the possession of the land and all that is on it, and the other party (the landlord) gives possession of the land, and reserves (that is, agrees to take) a rent, which the tenant agrees to pay him by way of compensation.

All things usually comprehended under the words "house," "farm," "land," "store," &c., pass to the tenant, where such words are used, unless there be an express exception. And inaccuracies as to qualities, names, measurements, or amounts will be corrected, if there be enough in the lease to make the purposes and intentions of the parties certain. And letting to hire any thing to be used carries with it all those appurtenances and accompaniments necessary for the proper use and enjoyment of the thing which belong to the lessor.

A landlord is bound to put his lessee into possession with good title. If he covenants "to renew" generally, this means a renewal of the lease on the same terms, but without inserting in the new lease another covenant of renewal.

A landlord is under no legal obligation to repair the house, unless he expressly agrees to do so. If the house is never so much dilapidated and disfigured as to paper, paint, &c., and locks and blinds and doors and windows are out of order, and the like, the tenant can claim nothing of the landlord. Even if it becomes wholly uninhabitable by no fault of the house or of the landlord, as if it burns up, or is blown down, or if the overflow of a stream ruins a field or a farm, still the landlord is not bound to do any thing, unless by special agreement, and is entitled to his rent under a common lease. Leases usually now provide for such cases.

But if the house is uninhabitable by its own fault, as if it has a noisome and unwholesome stench, or, according to one case, if it be overrun with rats, or if it be so decayed as to be open to the weather, it would seem to be the law of this country that the tenant may leave the house; always provided, however, that the objection or defect be not one which the tenant knew or anticipated, or would

have known or expected if he had made reasonable inquiry and investigation before he took his lease. And perhaps no tenant can leave his house or refuse or abate his rent, for any objection or difficulty arising *after* he hires the house. But, strange to say, the important question what the tenant's rights are in such a case is still uncertain.

If the house be wholly destroyed, the tenant must still pay rent, under an ordinary lease; because the law looks upon the land as the principal thing, and the house as secondary. And not only so, but if the tenant covenants "to return and redeliver the house at the end of the term, in good order and condition, reasonable wear and tear only excepted," he would be bound under this agreement to rebuild the house if it were burned down. But recently all well-drawn leases have clauses providing that the rent shall cease or be abated while the premises are uninhabitable from fire or any other unavoidable calamity. A similar exception is added to the clause about returning the house at the end of the lease. If this exception be in, a tenant is not bound to rebuild, even if the house be burned through the carelessness of himself or his servants.

A tenant of a room, or of a suite of chambers, is entitled to the use of all the appurtenances and accommodations which fairly go with it, as of the front door and entry, water-closets, and of all windows, &c., proper to the enjoyment of what he hires. But an express agreement about these things, and cellar-room, pump, and the like, is always safest.

The tenant is not bound to make general repairs, without an express agreement. But he must make such as are necessary to preserve the house from injury; as from rain, if shingles or slates are blown off or glass broken. And he would be bound even for proper ornamental repairs, as paper and paint, under a covenant to return "in good order."

The tenant of a farm is bound, without express covenants, to manage and cultivate the same in such a manner as good husbandry and the usual course of management of such farms in his vicinity would require.

The times for payment of rent are usually specified in the lease; if not, they would be governed by the usage of the country, if there were any of sufficient distinctness and force.

A tenant under a lease which says nothing about underletting has a perfect right to underlet, remaining himself bound for his rent to his landlord.

If there be a clause prohibiting him from underletting or assigning, and he agrees not to, nevertheless he may do so without

forfeiting the land; but he will be, as before, liable for rent: and besides this, he will be responsible in an action for any damages which the landlord can show that he has sustained by such underletting.

It is usual to go further in the lease than this, and provide that such underletting shall make a forfeiture of the lease, and authorize the landlord to enter upon the premises and turn the tenant out. Where there is this covenant, if the tenant now underlets, the landlord cannot avail himself of the clause of forfeiture and turn the tenant out, and afterwards hold the tenant for his rent. He may either hold him for his rent, and also for damages, or he may terminate the lease; but cannot do both. That is, if he continues to hold the tenant responsible for rent, he cannot prevent the tenant's letting somebody else occupy the house and pay to him (the tenant) the rent which he pays to the landlord.

**A tenant is not responsible for taxes, unless it is expressly agreed in the lease that he shall be.**

**A tenant of a farm, if his lease is terminated by any event which was uncertain, and which he could neither foresee nor control, is entitled to the annual crop which he sowed while his interest in and right to the farm continued.**

If a lease be for a certain time, the tenant loses all right or interest in the land or premises when that time comes, and he must leave, or the landlord may turn him out at once. But he is a tenant at will if he holds over after a lease with consent, or if he occupies the land or house or store without a lease but with consent and an oral bargain; and a tenant at will cannot leave, nor can he be turned out, without a notice to quit. The law on this subject is not uniform. In general, however, it is this: if rent is payable quarterly, or not more frequently, then there must be a quarter's notice. If rent is payable oftener, then the notice must be as long as the period of payment. Thus, if rent is payable monthly, there must be a month's notice; if weekly, a week's notice. But the notice must terminate on a day when the rent is payable. It may be given at any time, but operates only after the required interval or period between two payments. Thus, if a tenant whose lease terminates on the 31st of December holds over by consent, and pays rent quarterly, and the landlord wishes that he should leave the house on the last day of September, he may give notice on the preceding 30th day of June, or any day preceding that. But if he gives notice on any day before the 30th of June, the tenant will still have a right to stay until the 30th of September. Properly, the notice should specify the day, and the right day, when the tenant must leave; and should be in writing.

Where the rent is in arrear, the notice to quit may be more brief; the statutes of the different States vary on this point, but a frequent period is fourteen days. And if notice to quit is given because the rent is unpaid, it may be given at any time, and will operate at the end of the period which the law designates; but it should specify the day on which the tenant must quit.

A tenant may give notice of his intention to quit; and generally it will be subject to the same rules already stated in reference to the notice given by a landlord. A tenant should give his notice to the party to whom he is bound to pay rent, or to an authorized agent of that party.

#### FIXTURES.

It is quite important that both tenant and landlord should have some knowledge of the law of fixtures; for this tells them what things the tenant may take away and what he cannot. For there are many things which a tenant may add, and afterwards remove, and many which he cannot remove. The method of affixing them may be a useful criterion, as it indicates the purpose of removal or otherwise. If with screws, or in such a way as to show that removal was intended, things may be taken away, when, if the same things were fastened more permanently, they could not be. In modern times the rule in favor of the tenant seems to extend as far as this: whatever he has added, and can remove, leaving the premises entirely restored and in as good order as if he had not removed it, that he may take away. Among the things held to be removable, in different adjudged cases, are these: ornamental chimney-pieces; coffee-mills; cornices screwed on; furnaces; fire-frames; stoves; iron backs to chimneys; looking-glasses; pumps; gates; rails and posts; barns or stables on blocks.

Among those held not removable are these: barns fixed in the ground; benches fastened to the house; trees, plants, and hedges, not belonging to a gardener by trade; conservatory strongly affixed; glass windows; locks and keys.

But almost every one of these might be removable, or not, according to the intent of the parties, and the rule above stated, of removableness, with or without injury.

If a man sells a house, the law of fixtures is construed far more severely against him than against a tenant who leaves a house; that is, the seller must permit the buyer to hold a great many things which an outgoing tenant might remove. Of course, a seller may take what he will from his house before he sells it, or make what bargain the parties choose to make about the fixtures. But if he makes no such bargain, and sells the house, he

cannot then take from the house all that a tenant who put them there might take.

In favor of trade and manufactures, the law permits almost any thing which was put in by a tenant for such purpose to be taken away, if the premises can be restored substantially to their original condition.

#### FORMS ANNEXED TO THIS CHAPTER.

- (75.) A short form of a lease.
- (76.) A fuller form, with a provision for abatement of rents.
- (77.) A short form of lease, in use in the Western States.
- (78.) A lease of city property, in use in Chicago.
- (79.) A lease, with provisions for taxes and assessment.
- (80.) A lease, with covenants about water-rate and injury by fire; in use in New York.
- (81.) A lease by grant, in use in the Western States.
- (82.) A lease by certificate, with surety.
- (83.) A lease of city property, in use in St. Louis.
- (84.) What is called a country lease, in use in the Western States.
- (85.) A ground lease.
- (86.) An assignment of lease, and ground-rent.
- (87.) A lease containing chattel mortgage covenants, to secure the rent.
- (88.) A building lease.
- (89.) A mining lease.
- (90.) A lease of land, supposed to contain oil, salt, or other minerals.
- (91.) An assignment of a lease.
- (92.) Landlord's notice to quit for non-payment of rent. Short form.
- (93.) Landlord's notice to quit for non-payment of rent. Another form.
- (94.) Landlord's notice to pay rent due, or quit.
- (95.) Landlord's notice to leave at the end of the term.
- (96.) Landlord's notice to determine a tenancy at will.
- (97.) A receipt for rent, in use in New York.

#### (75.)

##### A SHORT FORM OF A LEASE.

THIS INDENTURE, Made this                      day of                      in the year  
of our Lord one thousand eight hundred and sixty-

WITNESSETH, That I (*name and residence of the lessor*), do hereby lease, demise, and let unto (*name and residence of lessee*), a certain parcel of land, in the city (*or town*) of                      county of                      and State of                      with all the buildings thereon standing, and the appurtenances to the same belonging, bounded and described as follows (*or, a certain house in said city, giving the street and number, with the land under and adjoining the same*).

*(The premises need not be described quite so minutely or fully as is proper in a deed or mortgage of land, but must be so described as to identify them perfectly, and make it certain just what premises are leased.)*

To HOLD for the term of \_\_\_\_\_ from the \_\_\_\_\_ day of \_\_\_\_\_ yielding and paying therefor the rent of \_\_\_\_\_

And said lessee does promise to pay the said rent in four quarterly payments, on the \_\_\_\_\_ day of *(or state otherwise just when the payments of rent are to be made)*, and to quit and deliver up the premises to the lessor or his attorney, peaceably and quietly; at the end of the term, in as good order and condition, reasonable use and wearing thereof, fire and other unavoidable casualties excepted, as the same now are or may be put into by the said lessor, and to pay the rent as above stated, and all taxes and duties levied or to be levied thereon, during the term, and also the rent and taxes, as above stated, for such further time as the lessee may hold the same; and not make or suffer any waste thereof; nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same, or make or suffer to be made any alteration therein but with the approbation of the lessor thereto, in writing, having been first obtained; and that the lessor may enter to view, and make improvements, and to expel the lessee, if he shall fail to pay the rent and taxes as aforesaid, or make or suffer any strip or waste thereof.

IN WITNESS WHEREOF, The said parties have hereunto interchangeably set their hands and seals, the day and year first above written.

*(Signature.)* *(Seal.)*  
*(Signature.)* *(Seal.)*

Signed, sealed, and delivered in presence of \_\_\_\_\_

(76.)

#### A FULLER FORM, WITH A PROVISION FOR ABATEMENT OF RENT.

THIS INDENTURE, Made this \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of our Lord one thousand eight hundred and \_\_\_\_\_ by and between *(name and residence of lessor)*, and *(name and residence of lessee)*.

WITNESSETH, That the said *(name of lessor)* does hereby lease, demise, and let unto the said *(name of lessee)*, *(describe the premises, as directed in Form 75)*.

To HOLD for the term of \_\_\_\_\_ commencing the \_\_\_\_\_ day of \_\_\_\_\_ A.D. one thousand eight hundred and \_\_\_\_\_ the said lessee or those claiming under him yielding and paying rent therefor, the sum of \_\_\_\_\_ for each and every year, and after the same rate for any part of a year.

And the said lessee, for himself, his heirs, executors, and administrators, does hereby covenant to and with the said lessor, and his heirs and assigns, that he or they will pay the said rent of \_\_\_\_\_ in equal sums of \_\_\_\_\_ the first of which payments shall be made on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. one thousand eight hundred and \_\_\_\_\_ and that he or they will pay rent after the same rate for such further time as he the said lessee, or those claiming under him, may hold the premises; that he or they will, from time to time, upon request by the lessor, or his

heirs or assigns, pay to them such sum or sums of money as shall be equal to the amount of the taxes and duties, and water-taxes, that shall be levied or assessed on the demised premises for each year and part of a year during the term aforesaid, and during such further time as the said lessee and those claiming under him may hold the premises; that he or they will not suffer nor commit any strip or waste in the premises; that he or they will not assign this lease, nor underlet the whole or any part of the premises, to any person or persons; and that no alterations or additions shall be made during the term aforesaid, in or to the same, without the consent of the said lessor, or of those having his estate in the premises, being first obtained in writing, allowing thereof; and also that it shall be lawful for the said lessor, and those having his estate in the premises, at seasonable times to enter into and upon the same to examine the condition thereof; and further, that he the said lessee and his representatives shall and will, at the expiration of said term, peaceably yield up unto the said lessor, or those having his estate therein, all and singular the premises, and all future erections and additions to or upon the same, in as good order and condition, in all respects (reasonable wearing and use thereof, and damage by fire and other unavoidable casualties excepted), as the same now are, or may be put into by the said lessor or those having his estate in the premises.

PROVIDED ALWAYS, And these presents are upon this condition, that if the said rent shall be in arrear, or the said lessee or his representatives or assigns do or shall neglect or fail to perform and observe any or either of the above covenants hereinbefore contained, which on his or their part are to be performed, then and in either of said cases the said lessor, or those having his estate in the said premises, lawfully may, immediately or at any time thereafter, and while such neglect or default continues, and without further notice or demand, enter into and upon the said premises, or any part thereof, in the name of the whole, and repossess the same as of his former estate, and expel the said lessee and those claiming under him, and remove his or their effects (forcibly if necessary), without being taken or deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant.

AND PROVIDED, ALSO, That in case the premises, or any part thereof, shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent hereinbefore reserved, or a just and proportionate part thereof, according to the nature and extent of the injuries sustained, shall be suspended or abated until the said premises shall have been put in proper condition for use and habitation by the said lessor, or these presents shall thereby be determined and ended at the election of the said lessor or his legal representatives.

IN TESTIMONY WHEREOF, The said parties have set their hands and seals, on the day and year first above written, to this and to another instrument of like tenor and date.

(Signature.) (Seal.)  
(Signature.) (Seal.)

Signed, sealed, and delivered in the presence of



## (77.)

## A SHORT FORM OF LEASE, IN USE IN THE WESTERN STATES.

THIS INDENTURE, Made this                      day of                      186  
between (*name and residence of the lessor*), party of the first part, and  
(*name and residence of the lessee*), party of the second part, witnesseth,  
that the said party of the first part, in consideration of the covenants of  
the said party of the second part, hereinafter set forth, do by these pres-  
ents lease to the said party of the second part the following-described prop-  
erty, to wit (*describe the property, as directed in Form 75*).

TO HAVE AND TO HOLD the same to the said party of the second part,  
from the                      day of                      186 to the                      day of  
186 And the said party of the second part, in consideration  
of the leasing the premises as above set forth, covenants and agrees with  
the party of the first part to pay the said party of the first part, as rent for  
the same, the sum of                      dollars, payable as follows, to wit (*here  
state the times and terms of payment, much as in Form 75*).

The said party of the second part further covenants with the said party  
of the first part, that at the expiration of the time mentioned in this lease  
peaceable possession of the said premises shall be given to said party of  
the first part, in as good condition as they now are, the usual wear, inevi-  
table accidents, and loss by fire excepted; and that upon the non-payment  
of the whole or any portion of the said rent at the time when the same is  
above promised to be paid, the said party of the first part may, at his elec-  
tion, either distrain for said rent due, or declare this lease at an end, and  
recover possession as if the same was held by forcible detainer: the said  
party of the second part hereby waiving any notice of such election, or any  
demand for the possession of said premises.

The covenants herein shall extend to and be binding upon the heirs,  
executors, and administrators of the parties to this lease.

WITNESS the hands and seals of the parties aforesaid.

(*Signature of lessor.*) (Seal.)

(*Signature of lessee.*) (Seal.)

## (78.)

## A LEASE OF CITY PROPERTY, IN USE IN CHICAGO.

THIS INDENTURE, Made this                      day of                      in the year  
of our Lord one thousand eight hundred and sixty-                      between  
(*name of the lessor*), of the city of                      in the county of  
and State of                      party of the first part, and (*name and residence of  
the lessee*), of the second part,

WITNESSETH, That the said party of the first part, for and in considera-  
tion of the covenants and agreements hereinafter mentioned, to be kept  
and performed by the said party of the second part, or his executors, ad-  
ministrators and assigns, has demised and leased to the said party of the

second part all those premises situate, lying, and being in the city of Chicago, in the county of Cook, and State of Illinois, and known and described as follows, to wit (*here describe the premises, as directed in Form 75*).

TO HAVE AND TO HOLD the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators, and assigns, from the                    day of                    in the year of our Lord one thousand eight hundred and sixty-                    for and during, and until the                    day of                    in the year of our Lord one thousand eight hundred and                    the said party of the second part paying rent therefor, as hereinafter stated.

And the said party of the second part, in consideration of the leasing the premises aforesaid, by the said party of the first part, to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, to pay the said party of the first part, at the house (*or office or store*) of the said party of the first part, numbered                    in                    Street, Chicago, or at the house or office of his assigns, as rent for the said demised premises, the sum of (*state the whole annual rent*), payable as follows (*here state the times and terms of the payments of rent*).

And it is further agreed by the said party of the second part, in consideration of the leasing of the premises, that the said party of the second part shall and will pay, or cause to be paid, promptly, as soon as the same becomes due, all assessments for water-rents that may be levied upon said demised premises, during the continuance of this lease, by the Board of Water Commissioners of the city of Chicago, and save the said premises and the said party of the first part harmless therefrom, and that he will keep said premises in a clean and healthy condition, in accordance with the ordinances of the city and the direction of the Sewerage Commissioners.

And the said party of the second part hereby covenants and agrees, in case of delay in payment of any water-rent levied upon said premises during said term, to pay said party of the first part, as liquidated damages for such breach of covenant, double the sum of such rent so assessed upon said premises as aforesaid.

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned, he will yield up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part first had and obtained thereto.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, By and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid on the day and at the place of payment whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the

second part, or his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy as in his or their first and former estate; and it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns; or in his or their absence, if the party of the second part or his legal representatives shall offer to pay the same then and there, such offer shall prevent such forfeiture.

And it is expressly understood that it shall not be necessary in any event for the party of the first part, or his assigns, to go on or near the said demised premises to demand said rent, or elsewhere than at the place aforesaid. And in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he may have to hold or retain any such property, under any exemption laws now in force in this State, or in any other way. Meaning and intending hereby to give to the said party of the first part, and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent, in manner aforesaid, any thing hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant, promise, and agree to surrender and deliver up said above-described premises and property peaceably to the said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and, if he shall remain in the possession of the same                      days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises under the statute, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated; and in order to enforce a forfeiture of this lease for non-payment of rent when due, no demand for rent when due shall be required, any demand being hereby expressly waived.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's

fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

IN TESTIMONY WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In presence of

(79.)

# A LEASE, WITH PROVISIONS FOR TAXES AND ASSESSMENTS.

THIS INDENTURE, Made the                      day of                      in the year one thousand eight hundred and                      between (*name and residence of lessor*), of the first part, and (*name and residence of lessee*), of the second part, witnesseth, That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained, on the part and behalf of the said party of the second                      part, his executors, administrators, and assigns, to be paid, kept, and performed, has granted, demised, and to farm letten, and by these presents does grant, demise, and to farm let, unto the said party of the second part, and his executors, administrators, and assigns, all (*describe the premises, as in Form 75*).

TO HAVE AND TO HOLD the said above mentioned and described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the                      day of                      one thousand eight hundred and                      for and during and until the full end and term of                      thence next ensuing: and fully to be complete and ended, yielding and paying therefor unto the said party of the first part, his heirs or assigns, yearly, and every year during the said term hereby granted, the yearly rent or sum of                      lawful money of the United States of America, in equal quarter-yearly payments, to wit, on the first day of (*name the months*), in each and every of the said years: provided always, nevertheless, that if the yearly rent above reserved, or any part thereof, shall be behind or unpaid on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants herein contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, then and from thenceforth it shall and may be lawful for the said party of the first part, his heirs or assigns, into and upon the said demised premises, and every part thereof, wholly to re-enter and remove all persons therefrom, and the same to have again, repossess, and enjoy, as in his or their first and former estate, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. And the said party of the second                      part, for himself and his heirs, executors, and administrators, does covenant and agree, to and with the said party of the first part, his heirs and assigns, by these presents, that the said party of the second                      part, his executors, administrators, or assigns, shall and will yearly, and every year during the

said term hereby granted, well and truly pay, or cause to be paid, unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents. And that the said party of the second part, his executors, administrators, or assigns, shall and will, at their own proper costs and charges, bear, pay, and discharge all such taxes, duties, and assessments whatsoever, as shall or may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises.

And that on the last day of the said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will peaceably and quietly leave, surrender, and yield up unto the said party of the first part, his heirs or assigns, all and singular the said demised premises.

And the said party of the first part, for himself and his heirs, executors, and administrators, does covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, by these presents, that the said party of the second part, executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his and their part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted peaceably and quietly have, hold, and enjoy the said demised premises, without any manner of let, suit, trouble, or hinderance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

IN WITNESS WHEREOF, the said have hereunto set their hands and seals, interchangeably, to two copies of this indenture.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In presence of

(80.)

# A LEASE, WITH COVENANTS ABOUT WATER-RATE AND INJURY BY FIRE, IN USE IN NEW YORK.

THIS AGREEMENT, Made between (name and residence of lessor), party of the first part, and (name and residence of lessee), party of the second part, witnesseth, That the said party of the first part has agreed to let, and hereby does let, and the said party of the second part has agreed to take, and hereby does take, the following-described premises (here describe the premises, as in Form 75), for the term of to commence and to end to be occupied (describe the intended occupation), and not otherwise. And the said party of the second part hereby covenants and agrees to pay unto the said party of the first part the annual rent or sum of dollars, payable (state the times and terms of the payments).

And shall also pay the Croton water-rate, and will keep the plumbing

work, pipes, glass, and the premises generally, in repair, and will surrender them at the expiration of the said term in as good state and condition as reasonable use and wear thereof will permit.

And the said party of the second part further covenants that he will not assign, let, or underlet the whole or any part of the said premises, nor make any alteration therein, without the written consent of the said party of the first part, under the penalty of forfeiture and damages; and that he will not occupy the said premises, nor permit the same to be occupied, for any business deemed extra hazardous, without the like consent, under the like penalty. And the said party of the second part further covenants that he will permit the said party of the first part, or his agent, to show the premises to persons wishing to hire or purchase, and three months next preceding the expiration of the term will permit the usual notices of "to let" or "for sale" to be placed upon the windows, walls, or doors of said premises, and remain thereon without hinderance or molestation.

And also, that if default be made in any of the covenants herein contained on the part of the party of the second part, or if the said premises or any part thereof shall become vacant during the said term, the said party of the first part may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor; and re-let the said premises or any part thereof in one or more parcels, as the agent of the said party of the second part, and receive the rent thereof, applying the same, first to the payment of such expense as he may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said party of the second part; and in case of deficiency said party of the second part will pay the same.

And the said party of the second part hereby further covenants that if any default be made in the payment of the said rent or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said party of the first part, shall wholly cease and determine; and the said party of the first part shall and may re-enter the said premises, and remove all persons therefrom; and the said party of the second part hereby expressly waive the service of any notice in writing of intention to re-enter, as provided for in the third section of an act entitled "An Act to abolish distress for rent, and for other purposes," passed May 13, 1846.

And it is further agreed between the parties to these presents, that, in case the building hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible by the party of the first part; that, in case the damage shall be so extensive as to render the building untenable, the rent shall cease until the same be repaired, provided the damage be not caused by the carelessness or negligence of the party of the second part, or his agents or servants.

If the building be so damaged that the owner shall decide to rebuild, the term shall cease, the premises be surrendered, and the accrued rent be paid up to the time of the fire.

In consideration of the letting of the premises above mentioned to the above-named (*name of the lessee*), and of the sum of one dollar to him paid

by the said party of the first part, the said party of the second part does hereby covenant and agree to and with the party of the first part above named, and his legal representatives, that if default shall at any time be made by the said party of the second part, in the payment of the rent and performance of the covenants above contained on his part to be paid and performed, that he will well and truly pay the said rent or any arrears thereof that may remain due unto the said party of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring notice of any such default from the said party of the first part.

WITNESS our hands and seals, this                      day of                      in  
the year of our Lord one thousand eight hundred and

(Signature of lessor.)                      (Seal.)

(Signature of lessee.)                      (Seal.)

(Witness.)

(81.)

#### A LEASE BY GRANT, IN USE IN THE WESTERN STATES.

THIS INDENTURE, Made and entered into on the                      day of  
one thousand eight hundred and sixty-                      by and between  
(name of lessor), of (residence of lessor), party of the first part, and (name  
of lessee), of (residence of lessee), party of the second part, witnesseth,  
That the said party of the first part, in consideration of the rents reserved,  
and the covenants hereinafter contained, does hereby grant, demise, and to  
farm let unto the said party of the second part (describe the premises, as in  
Form 75).

TO HAVE AND TO HOLD THE SAME, With all the rights, immunities,  
privileges, and appurtenances thereto belonging, unto the said party of the  
second part, and his executors, administrators, and assigns, for and during  
the full end and term of                      commencing on the                      day  
of                      186                      and ending on the                      day of  
186                      under and subject to the stipulations hereinafter contained, the said  
party of the second part yielding and paying to the said party of the first  
part, for the said premises, the annual rent of                      payable in equal  
quarterly (or monthly) payments; that is to say                      on the  
during said term; which rent the said party of the second part, for himself  
and his executors, administrators, and assigns, covenants well and truly to  
pay, at the times aforesaid.

And the said party of the second part covenants and agrees that if the  
rent aforesaid should at any time remain due and unpaid, the same shall  
bear interest at the rate of                      per cent per annum from the time it  
so becomes due until paid. And the said party of the second part further  
covenants and agrees that it shall be lawful for the said party of the first  
part, and those having freehold estate in the premises, at reasonable terms,  
to enter into and upon the same, to examine the condition thereof; and  
also that the said party of the second part and his legal representatives  
shall and will, at the expiration of this lease, whether by limitation or for-  
feiture, peaceably yield up to the said party of the first part, or his legal

representatives, the said premises, in the condition received, only excepting natural wear and decay, and the effects of fire; and that the said party of the second part, for and during all the time that he or any one else in his name shall hold over the premises, after the expiration of this lease, in either of said ways, shall and will pay to said party of the first part double the rent hereinbefore reserved. Also the said party of the second part further covenants and agrees that any failure to pay the rent hereinbefore reserved when due, and within                      days after a demand of the same, shall produce an absolute forfeiture of this lease, if so determined by said party of the first part, or his legal representatives. Also that this lease shall not be assigned, nor the said premises, or any part thereof, underlet, without the written consent of the said party of the first part, or his legal representatives, under penalty of forfeiture. And that all repairs of a temporary character, deemed necessary by said party of the second part, shall be made at his own expense, with the consent of the said party of the first part, or his legal representatives, and not otherwise.

PROVIDED ALWAYS, And these presents are on this express condition, that if the said party of the second part, or his legal representatives, shall fail to pay the rent hereinbefore reserved, for the space of                      days after the same shall have become due, or shall fail to perform any of the covenants hereinbefore entered into on his and their part, then the said party of the first part shall be at liberty to declare this lease forfeited, by serving a written notice to that effect on the said party of the second part, or his legal representatives, and to re-enter upon and take possession of the demised premises, free from any claim of the lessee or any one claiming under him. And all estate herein granted shall, upon service of such notice, forthwith cease; and said lessor, his heirs, legal representatives, or assigns, shall be forthwith entitled to the possession of the demised premises, without any further proceeding at law or otherwise to recover possession thereof. And the said party of the first part covenants and agrees with the said party of the second part, and his legal representatives, that, the covenants herein contained being faithfully performed by the said party of the second part, he shall peaceably hold and enjoy the said demised premises, during the term aforesaid, without hinderance or interruption by the said lessor or any other person.

IN WITNESS WHEREOF, The said parties have executed this indenture in duplicate, signing their names and affixing their seals to both parts thereof, the day and year in this behalf above written.

(Signature of lessor.)                      (Seal.)

(Signature of lessee.)                      (Seal.)

In presence of

(82.)

#### A LEASE BY CERTIFICATE, WITH SURETY.

THIS IS TO CERTIFY, That I have let and rented unto (*name of lessee*), (*describe the premises, as in Form 75*), for the term of                      from the  
day of                      18                      at the annual rent of





and by these presents doth lease, to the said party of the second part, the following-described premises (*here describe the house, as of brick or stone, number of stories, and number in the block*), in block No. \_\_\_\_\_ in the city of St. Louis, \_\_\_\_\_ to commence on the \_\_\_\_\_ day of \_\_\_\_\_ 186 \_\_\_\_\_ for and during the term of \_\_\_\_\_ at the annual rent of \_\_\_\_\_ payable in four equal quarterly payments, beginning three months from the date hereof. Any failure to pay each payment of rent when due, to produce a forfeiture of this lease, if so determined by said lessor or his successors. The lease of said tenement or any part of it is not assignable, nor is said tenement or any part of it to be underlet, without the written consent of said lessor, under penalty of forfeiture. And it is hereby covenanted, that, at the expiration of this lease, the said tenement and premises are to be surrendered to said lessor, his heirs, assigns, or successors, in the condition received, only excepting its natural wear and decay, or the effects of accidental fire. All repairs deemed necessary by said lessee to be made at his expense. All fixtures shall be bound for the rent.

The said lessee, and all holding under him, hereby engaging to pay the rent above reserved, and double rent for every day when he or any one else in his name shall hold on to the whole or any part of said tenement, after the expiration of this lease, or of its forfeiture for non-payment of rent, &c. This tenement and premises to be kept free of any nuisance in or adjacent thereto, at the expense of the said lessee.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

(Witness.)

(84.)

#### WHAT IS CALLED A COUNTRY LEASE, IN USE IN THE WESTERN STATES.

THIS INDENTURE, Made this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ between (*name of lessor*) of the \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ and State of \_\_\_\_\_ party of the first part, and (*name and residence of lessee*), party of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying, and being in the township of \_\_\_\_\_ county of \_\_\_\_\_ State of \_\_\_\_\_ known and described as follows, to wit (*describe the premises in such way as to identify them perfectly by situation, metes, and bounds, or otherwise*).

TO HAVE AND TO HOLD the said above-described premises, with the appurtenances, unto the said party of the second part, and his executors, administrators, and assigns, from the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ for and during, and until the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_ paying rent therefor as hereafter stated.

And the said party of the second part, in consideration of the leasing of the premises aforesaid, by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for the said demised premises, the sum of \_\_\_\_\_ dollars, annual rent, payable quarterly, in four equal quarterly payments, the first payment to be due and made in three months from the date of this lease, payable at the (*here state the place where the rent should be paid*).

And the said party of the second part further covenants with the said party of the first part, that at the expiration of the time in this lease mentioned he will yield up the said demised premises to the said party of the first part, in as good condition as when the same were entered upon by the said party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereto.

IT IS EXPRESSLY UNDERSTOOD AND AGREED by and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day and at the place of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the said party of the second part, or any other person or persons occupying, in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate ; and it shall be the duty of the said party of the second part, his executors, administrators, or assigns, to be and appear at the said place above specified, for the payment of said rent, and then and there tender and pay the same as the same shall fall due from time to time, as above, to the said party of the first part, or his agent or assigns ; or in his or their absence, if the said party of the second part shall offer to pay the same then and there, such offer shall prevent said forfeiture.

And it is expressly understood that it shall not be necessary in any event for the party of the first part or his assigns to go on or near the said demised premises to demand said rent, or elsewhere than at the place aforesaid. And in the event of any rent being due and unpaid, whether before or after such forfeiture declared, to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not, and the said party of the second part, in that case, hereby waives all legal rights which he now has or may have, to hold or retain any such property, under any exemption laws now in force in this State,

or in any other way. Meaning and intending hereby to give to the said party of the first part, and his heirs, executors, administrators, and assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the said party of the second part, as security for the payment of said rent in manner aforesaid, any thing hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, for himself and his executors, administrators, and assigns, does hereby covenant, promise, and agree to surrender and deliver up said above-described premises and property peaceably to said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if he shall remain in the possession of the same                      days after notice of such default, or after the termination of this lease, in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above-named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further covenanted and agreed by and between the parties, that the party of the second part shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture by the party of the first part.

IN TESTIMONY WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of lessor.)                      (Seal.)

(Signature of lessee.)                      (Seal.)

In presence of

(85.)

#### A GROUND LEASE.

THIS INDENTURE, Made this                      day of                      in the year .  
of our Lord one thousand eight hundred and sixty-                      between  
(name and residence of lessor), party of the first part, and (name and residence of lessee), party of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the party of the second part, hath demised and leased to the party of the second part all those premises situate in the                      of                      in the county of                      and State of                      known and described as follows, to wit (here give such description of the premises as shall identify them, and distinguish them from any other).

TO HAVE AND TO HOLD the above-described premises, with the appurtenances, unto the party of the second part, from the                      day of                      in the year of our Lord one thousand eight hundred and                      for and during and until the                      And the party of the second part, in consideration of the leasing of the premises aforesaid,

does covenant and agree with the party of the first part to pay to the party of the first part, as rent for said demised premises, at the office of  
in the sum of (*state the sum to be paid as annual rent*), in four equal quarterly payments, each of them the sum of dollars, to be paid on the first (*or other*) day of the months of (*the four months in which the rent is payable*), in each year (*or describe otherwise the terms and times of the payments as they may have been agreed upon*); and also that the said party of the second part will pay, or cause to be paid, all water-rates, and all taxes and assessments that may be laid, charged, or assessed on said demised premises, pending the existence of this lease; or if at any time after any tax, assessment, or water-rate shall have become due or payable, the party of the second part, or his legal representatives, shall neglect to pay such water-rates, tax, or assessment, it may be lawful for the party of the first part to pay the same at any time thereafter, and the amount of any and all such payments so made by the party of the first part shall be deemed and taken, and are hereby declared to be, so much additional and further rent, for the above-demised premises, due from and payable by the party of the second part; and may be collected in the same manner, by distress or otherwise, as is hereinafter provided for the collection of other rents to grow due thereon.

And it is expressly understood and agreed by the said party of the second part hereto, for himself and his heirs, executors, administrators, and assigns, that the whole amount of rent reserved and agreed to be paid for said above-demised premises, and each and every instalment thereof, shall be and is hereby declared to be a valid and first lien upon any and all buildings and improvements on said premises, or that may at any time be erected, placed, or put on said premises by said party of the second part, or his heirs, executors, administrators, or assigns, and upon his or their interest, in this lease, and the premises hereby demised; and that whenever and as often as any instalment of rent or any other amount above declared to be deemed and taken as rent shall become due and remain unpaid for one day after the same becomes due and payable, said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, may sell at public auction to the highest bidder, for cash, after having first given ten days' notice of the time and place of such sale in some newspaper published in all the buildings and improvements on said premises, and all the right, title, and interest acquired by said party of the second part, under this lease, to the premises herein described, and as the attorney of said party of the second part — hereby irrevocably constituted — may make to the purchaser or purchasers thereof a suitable and proper transfer bill of sale or deed of the same, and out of the proceeds arising from such sale, after first paying all costs and expenses of such sale, including commissions and attorney's fees, retain to himself the whole amount due on said lease, up to the date of said sale, rendering the surplus (if any) to said party of the second part, his heirs, executors, administrators, agent, attorney, or assigns, which sale shall be a perpetual bar to and against all rights and equities of said party of the second part, his heirs and assigns, in and to the property sold.

And the party of the second part further covenants with the party of the first part, that, at the expiration of the time in this lease mentioned, he will yield up said demised premises to the party of the first part, in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable accident and ordinary wear excepted.

It is further agreed by the party of the second part, that neither he nor his legal representatives will underlet said premises, or any part thereof, or assign this lease, without the written assent of said party of the first part, first had and obtained thereunto, nor use or suffer them to be used for any purpose calculated to injure the reputation of the premises, or of the neighborhood, or to impair the value of the surrounding neighborhood property, for present use or otherwise.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, By and between the parties aforesaid, that if the rent above reserved, or any part thereof, shall be behind or unpaid, on the day of payment, whereon the same ought to be paid, as aforesaid, or if default shall be made in any of the covenants herein contained to be kept by the party of the second part, his executors, administrators, or assigns, it shall and may be lawful for the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter, and the party of the second part, or any other person or persons occupying in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as of his or their first and former estate; and to distrain for any rent that may be due thereon, upon any property belonging to the party of the second part, whether the same be exempt from execution and distress by law or not; and the party of the second part, in that case, hereby waives all legal rights which he now has, or may have, to hold or retain any such property under any exemption laws now in force in this State, or in any other way; meaning and intending hereby to give the party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, a valid and first lien upon any and all the goods, chattels, or other property belonging to the party of the second part, as security for the payment of said rent, in manner aforesaid, any thing hereinbefore contained to the contrary notwithstanding. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, as aforesaid, or in any other way, the party of the second part does hereby covenant and agree to surrender and deliver up said above-described premises and property, peaceably, to the party of the first part, or his heirs, executors, administrators, agent, attorney, or assigns, immediately upon the determination of said term, as aforesaid; and if the said party of the second part or his legal representatives shall remain in possession of the same one day after notice of such default, or after the termination of this lease, in any of the ways above named, he or they shall be deemed guilty of a forcible detainer of the premises, and shall be subject to all the condi-

tions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

And it is further understood and agreed by the said party of the second part, that neither the right given in this lease, to said party of the first part, to collect the rent that may be due under the terms of this lease by sale, or any proceedings under the same, shall in any way affect the right of said party of the first part to declare this lease void and the term hereby created ended, as above provided upon default made by said party of the second part.

And the said party of the first part hereby waives his right to any notice from said party of the second part, of his election to declare this lease at an end, under any of its provisions, or any demand for the payment of rent, or the possession of premises leased herein, but the simple fact of the non-payment of the rent reserved shall constitute a forcible entry and detainer as aforesaid.

The said party of the second part further agrees not to remove any buildings or other improvements from said premises, without written consent of said party of the first part, and that the said second party shall pay and discharge all costs and attorney's fees and expenses that shall arise from enforcing the covenants of this indenture, by the party of the first part.

*It is further understood and agreed,* That all the conditions and covenants contained in this lease shall be binding upon the heirs, executors, administrators, and assigns of the parties to these presents respectively:

IN TESTIMONY WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

Signed, sealed, and delivered in presence of

(86.)

#### AN ASSIGNMENT OF LEASE, AND GROUND-RENT.

THIS INDENTURE, Made the                      day of                      in the year of our Lord one thousand eight hundred and                      between (*name and residence of the assignor*), party of the first part, and (*name and residence of the assignee*), party of the second part, witnesseth, That the said party of the first part, for and in consideration of the sum of                      dollars, lawful money of the United States of America, unto him in hand well and truly paid by the said party of the second part, at the time of the execution hereof, the receipt whereof is hereby acknowledged, by these presents does grant, bargain, sell, assign, release, and confirm unto the said party of the second part a certain indenture, made and executed on the                      day of                      in the year of our Lord eighteen hundred and                      whereby the said party of the first part leased to one (*name of the lessee in the lease here assigned*) certain premises therein

described as follows (*here copy the description of the premises in that lease*), reserving a certain rent, payable to said party of the first part; that is to say (*here state the rent reserved in that lease*), payable (*here state the times and terms of payment*), together with the said rent, to the said party of the first part, payable as aforesaid.

TOGETHER with all right and power of entry and distress and of re-entry, and all other the covenants, ways, means, and remedies for the recovery thereof, and all and singular the rights, incidents, and appurtenances whatsoever thereunto belonging, and the reversions and remainders thereof, and all the estate, right, title, interest, property, claim, and demand whatsoever, of him the said party of the first part, or his legal representatives, either in law or equity, as well of, in, and to the said yearly rent or sum hereby granted and assigned, as also of, in, and to the said lot or piece of ground, with the appurtenances, for and out of which the same rent is issuing and payable. To have and to hold, receive and take, all and singular the hereditaments and premises hereby granted and assigned, with the rights, remedies, incidents, and appurtenances, unto the said party of the second part, his heirs and assigns, to and for the only proper use and behoof of him the said party of the second part, his heirs and assigns, for ever. And the said party of the first part, and his heirs, all and singular the hereditaments and premises hereby granted and assigned, with the rights, remedies, incidents, and appurtenances, unto the said party of the second part, and his heirs and assigns, against him the said party of the first part and his heirs, and against all and every other person and persons whomsoever, lawfully claiming or to claim by, from, or under him or them, or any of them, shall and will warrant and for ever defend, by these presents.

IN WITNESS WHEREOF, The said parties to these presents have hereunto interchangeably set their hands and seals, the day and year hereinbefore first written.

(Signature of the assignor.) (Seal.)

(Signature of the assignee.) (Seal.)

Sealed and delivered in the presence of us,

(Witnesses.)

RECEIVED the day of the date of the above indenture of the above-named the sum of being the full consideration money above mentioned.

(Signature of the assignor.)

(Witness.)

ON THE day of A.D. 18 before me, personally appeared the above-named (*name of the assignor*), and in due form of law acknowledged the above indenture to be his free act and deed, and desired the same might be recorded as such.

WITNESS my hand and seal, the day and year aforesaid.

(Signature.) (Seal.)



(87.)

## A LEASE CONTAINING CHATTEL MORTGAGE COVENANTS, TO SECURE THE RENT.

THIS INDENTURE, Made this                    day of                    in the year of our Lord one thousand eight hundred and                    between *(name and residence of lessor)*, of the first part, and *(name and residence of the lessee)*, of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said party of the second part, his executors, administrators, and assigns, has demised and leased to the said party of the second part all those premises situate, lying, and being in the city of                    in the county of                    and in the State of                    known and described as follows, to wit *(here describe the premises, as in Form 75)*.

TO HAVE AND TO HOLD the said above-described premises, with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the                    day of                    in the year of our Lord one thousand eight hundred and                    for and during and until the                    day of                    in the year of our Lord one thousand eight hundred and                    And the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part, does covenant and agree with the said party of the first part, his heirs, executors, administrators, and assigns, to pay the said party of the first part, as rent for said demised premises, the sum of                    dollars, in four equal quarterly payments of                    dollars each (\$                    ), payable *(here state the days when the rent should be paid)*, at the house *(or office, or counting-room, or store)* of said party of the first part, in said city of                   

And it is further agreed by the said party of the second part, in consideration of the leasing of the premises aforesaid, that the said party of the second part shall and will pay, or cause to be paid, promptly, as soon as the same becomes due, all assessments for water-rents that may be levied upon said demised premises during the continuance of this lease, and save said premises and the party of the first part harmless from all charges and expenses connected with the supply of water to said premises. And the said party of the second part hereby covenants and agrees, in case of default in the payment of any water-rent levied upon said premises during said term, to pay unto said party of the first part, as liquidated damages for such breach of covenant, double the sum of such rent so assessed upon said premises as aforesaid.

And the said party of the second part further covenants with the said party of the first part, that he will keep said premises in a clean and healthy condition, in accordance with the ordinances of the city and directions of the proper authorities.

It is further agreed by the said party of the second part, that neither he nor his legal representatives will underlet said premises or any part thereof,

or assign this lease, without the written assent of the said party of the first part first had and obtained thereto.

THIS INDENTURE FURTHER WITNESSETH, That the said party of the second part, for and in consideration of the sum of (*insert the whole sum to be paid under the lease*) dollars in hand paid, the receipt whereof is hereby acknowledged, does hereby grant, sell, convey, and confirm unto the said party of the first part, his heirs and assigns, all and singular the following-described goods and chattels, to wit (*here give a schedule or list of the articles, describing them sufficiently*).

TOGETHER with all and singular the appurtenances thereunto belonging, or in any wise appertaining: to have and to hold the same unto the said party of the first part, his heirs, executors, administrators, and assigns, to his and their sole use for ever. And the said party of the second part, for himself and for his heirs, executors, and administrators, does covenant and agree with the said party of the first part, and his heirs, executors, administrators, and assigns, that he is lawfully possessed of the said goods and chattels as of his own property; that the same are free from all incumbrances, and that he will, and his heirs, executors, and administrators shall, warrant and defend the same unto the said party of the first part, and his heirs, executors, administrators, and assigns, against the lawful claims and demands of all persons.

PROVIDED, NEVERTHELESS, That if the said party of the second part, or his heirs, executors, administrators, or assigns, shall well and truly pay, or cause to be paid, unto the said party of the first part, or his heirs, executors, administrators, or assigns, the said sum of                      dollars, rent, above reserved, punctually, and in the manner and at the times and place above mentioned, then and from thenceforth these presents, and every thing herein contained, shall cease, and be null and void.

AND PROVIDED, ALSO, That it shall be lawful for the said party of the second part, his heirs, executors, and administrators, to retain possession of the said granted goods and chattels, and at his own expense to keep and to use and enjoy the same, until the said party of the second part, or his heirs, executors, administrators, or assigns, shall make default in the payment of said rent above specified, at the time or times, and in the manner hereinbefore contained; or unless the said party of the first part shall fear diminution, removal, or waste, for want of proper care; or if the said party of the second part shall sell or assign, or attempt to sell or assign, said goods and chattels, or any part thereof; or if any writ issued from any court shall be levied on any part of the above-described goods and chattels, — that then, and in any of the aforesaid cases, all of said sum of                      dollars, above reserved as rent for said demised premises, shall become due and payable; and the said party of the first part, his heirs, executors, administrators, and assigns, agents, or attorneys, or any of them, may elect to take possession of the said property, and for that purpose may pursue the same or any part thereof, wherever it may be found, and also may enter any of the premises of the said party of the second part, with or without force or process of law, wherever the said goods and chattels may be or be supposed to be, and search for the same, and, if found, to take possession of and remove, and sell and dispose, of said property, or so

much thereof as may be necessary to pay the rent due, and the balance of rent for the whole unexpired term, whether due or not due, at public auction, to the highest bidder, after giving ten days' notice of the time, place, and terms of sale, together with a description of the property to be sold, either by publication in some newspaper in the city of \_\_\_\_\_ or by similar notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said party of the first part, or his heirs, executors, administrators, or assigns, agents or attorneys, or any of them, may elect; and out of the money arising from such sale, to retain, first, all costs and charges for pursuing, searching, taking, removing, keeping, storing, advertising, and selling of such property, goods, chattels, and effects, and all prior liens, together with the rent due and the balance of rent for the whole unexpired term, whether due or not due, rendering the overplus of the money arising from such sale, and the remainder of said goods and chattels, if any there shall be, unto the said party of the second part, or his legal representatives.

IT IS EXPRESSLY UNDERSTOOD AND AGREED, by and between the parties aforesaid, that if the rent above covenanted to be paid, or any part thereof, shall be behind or unpaid on the day of payment whereon the same ought to be paid as aforesaid, or if default shall be made in any of the covenants herein contained, to be kept by the said party of the second part, his executors, administrators, and assigns, it shall and may be lawful for the said party of the first part, his heirs, executors, administrators, agent, attorney, or assigns, at his or their election, to declare said term ended, and into the said demised premises, or any part thereof, either with or without process of law, to re-enter; and that said party of the second part, or any other person or persons occupying in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the said premises again to repossess and enjoy, as in his or their first and former estate, and to distrain for any rent that may be due thereon, upon any property belonging to the said party of the second part, whether the same be exempt from execution or distress by law or not; and the said party of the second part, in that case, hereby agrees to waive all legal right which he may have to hold or retain any such property, under any exemption law now in force in this State, or in any other way. And if at any time said term shall be ended at such election of said party of the first part, or his heirs, executors, administrators, or assigns, as aforesaid, or in any other way, the said party of the second part, or his executors, administrators, or assigns, does hereby covenant and agree to surrender and deliver up said above-described premises and property peaceably to said party of the first part, or his heirs, executors, administrators, and assigns, immediately upon the determination of said term as aforesaid; and if he shall remain in possession of the same after such default, or after the termination of this lease in any of the ways above named, he shall be deemed guilty of a forcible detainer of said demised premises, and shall be subject to all the conditions and provisions above named, and to eviction and removal, forcibly or otherwise, with or without process of law, as above stated.

IN TESTIMONY WHEREOF, The said parties have hereunto set their hands and seals, the day and year first above written.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In presence of

STATE OF

COUNTY OF

} ss.

I, justice of the peace in and for said county, do hereby certify that this lease and mortgage was duly acknowledged before me by the above-named (name of lessee), this day of A.D. 18 (Seal.)

(88.)

#### A BUILDING LEASE.

THIS DEED OF LEASE, Made and entered into in duplicate this day of A.D. 186 between (name of lessor), of county of and State of party of the first part, and (name of lessee), of county of and State of party of the second part:

WITNESSETH, That the said party of the first part, in consideration of the covenants, agreements, and stipulations hereinafter mentioned, as well as the yearly rent of dollars, to be paid to him in four equal quarterly payments in each year (the first payment to be made on the day of A.D. 186), doth by these presents lease to the said party of the second part, for the term of years, which said term begins on the day of 186 the following-described lot of land, to wit (*here describe the premises, as in Form 75*).

The said party of the second part, for himself and his heirs, hereby covenants with said lessor and his heirs to pay said rent as aforesaid, and also to pay all city, county, and State taxes, and all other taxes and demands of every description, nature, or kind whatever, which may from time to time be legally required or demanded of said premises, whether general tax or special tax.

Every failure, first, to pay the said rent, or any part thereof, when it is respectively made payable; or, second, to pay the said city, county, and State taxes, and all other taxes and demands, or any part thereof (legally required or demanded of said premises, within the year the same shall become due, assessed to either said lessor, his heirs or representatives, or to said lessee or his representatives); or, third, to keep and perform any of the other covenants, agreements, or stipulations herein mentioned,—shall make and create a forfeiture of this lease, and a termination of the term for which the above premises were let; and all the estate hereby conveyed shall be absolutely void, if so determined, at any day or time, however distant, after such failure, by notice in writing to that effect, given by said lessor, his heirs or assigns, to said lessee or his assigns; which said notice

may be served by posting a copy or duplicate of the same up at one of the most public places on said premises, or by delivering a copy or duplicate of such notice to said lessee or his assigns.

This lease of said premises, or any part thereof, is not to be assigned, under penalty of forfeiture, without the written consent of said lessor, his heirs or assigns. At the expiration of this lease, the said premises to be delivered to said lessor, his heirs or assigns. The said lessee, and all who hold under him, hereby engage to pay double rent for every day they or any one else in their name shall hold on to the whole or any part of said premises after the expiration of this lease, or after forfeiture thereof.

The said lessee is, under penalty of forfeiture, bound to keep said premises free from any disorderly, bawdy, or gambling establishments, dram-shops, tippling-shops, beer-houses, or any nuisances whatsoever. And in case of any forfeiture of this lease, the said lessor, his heirs and assigns, may forthwith take possession of said premises, with all the improvements thereon, and shall be entitled to the same, any custom, usage, or law to the contrary notwithstanding.

All improvements erected on said premises by said lessee or his assigns, or by any one who may claim under them, are bound for the payment of each quarterly instalment of rent, and for the city, county, and State taxes, and all other taxes and demands as aforesaid, and for any arrears of rent or taxes; and in case of the punctual payment of the rent and taxes, as herein specified, the said lessee or his assigns is hereby authorized to remove all such improvements (and no others), at the expiration of this lease, which he or any one who may claim under him may have erected on said premises during said term.

IN TESTIMONY WHEREOF, The parties hereto have hereunto set their hands and seals to duplicate leases, the day and year aforesaid.

(Signature of lessor.) (Seal.)

(Signature of lessee.) (Seal.)

In presence of

(89.)

#### A MINING LEASE.

THIS INDENTURE, Made this                      day of                      in the year of our Lord one thousand eight hundred and                      between (name and residence of the lessor), of the first part, and (name and residence of the lessee), of the second part, witnesseth, That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained on the part of the said party of the second part, and of one dollar in hand paid to the said party of the first part, the receipt whereof is hereby acknowledged, has granted and conveyed, and by these presents does grant and convey, to the said party of the second part, his heirs, executors, administrators, and assigns, the right of entering in and upon the lands hereinafter described, for the purpose of searching for mineral and fossil substances, and of conducting mining and quarrying operations, to

any extent he or they may deem advisable (but not to hold possession of any part of said lands for any other purpose whatsoever), paying for the site of buildings of any kind necessary thereto a reasonable rent.

The said lands are situated (*here state the situation of the premises leased, and describe them by metes and bounds, dimensions, and references to other boundaries, so as to distinguish them perfectly*).

And the said party of the second part hereby agrees that he or his heirs, executors, administrators, or assigns will pay or cause to be paid to the said party of the first part, his heirs or assigns, an annual rent of the amount of                      dollars, in four equal quarterly payments, payable severally on the following days (*here state the days when the payments are to be made, or whatever other terms or times are agreed upon*), and also covenants that no damage shall be done to or upon said lands and premises, other than may be necessary in conducting said operations. And it is agreed and covenanted by and between the parties hereunto, that this lease shall be and remain in full force and effect (subject to the proviso herein-after stated)                      years, from the date hereof, and no longer. But the said parties of the first and the second part, each for themselves, their heirs, executors, administrators, and assigns, covenant and agree, and this indenture is made with this express proviso, that if no mineral or fossil substance be mined or quarried, as now contemplated by said parties, within the period of                      years, from the present time, then these presents, and every thing contained herein, shall cease and be for ever null and void.

IN TESTIMONY WHEREOF, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

(Signature of lessor.)                      (Seal.)

(Signature of lessee.)                      (Seal.)

Signed, sealed, and delivered in presence of

(90.)

# A LEASE OF LAND SUPPOSED TO CONTAIN OIL, SALT, OR OTHER MINERALS.

ARTICLES OF AGREEMENT. Made and concluded this                      day of                      A.D. 186                      between (*name of lessor*), of the township of                      county of                      and State of                      party of the first part, and (*name and residence of lessee*), party of the second part. Witnesseth, That the said party of the first part, for himself and his heirs, executors, administrators, and assigns, for and in consideration of the sum of one dollar, the receipt of which is hereby acknowledged, and for the further consideration hereinafter mentioned, and on account of covenants hereinafter contained, hereby leases to the said party of the second part, his heirs, executors, administrators, and assigns, the following-described piece or parcel of land, situated in the township of                      county of                      and State of                      bounded and described as follows (*describe the premises, as in the preceding Form*). The said land more

fully described in deed of conveyance by (*name of the grantor to the lessor*) to the said party of the first part, containing \_\_\_\_\_ acres, more or less, for the purpose of boring, mining, and operating for oil, salt, and other minerals on said land, for the term of \_\_\_\_\_ years.

Said second parties to have the exclusive right to mine for oil, salt, and other minerals, on said land, during the continuance of said term; to have the privilege of taking sufficient coal and wood for conducting said boring and mining operations, and timber for derricks and mill-frames and for refineries, and the right to erect all necessary buildings upon said premises for carrying on the business of boring for oil, and mining, refining, and storing away oil and other minerals; and to have the necessary roads to and from any well or wells that may be bored, or any mines; and to have possession whenever they shall be ready to commence operations. And in case successful in obtaining oil or other minerals, agree to deliver to the said party of the first part (*here state the part or proportion which is to be given to the lessor*) of all oil, salt, or other minerals obtained. Said party of the first part to find his own barrels, and remove the oil and other minerals belonging to him, as often as required by the second parties. And in case said second parties should not be successful in obtaining oil or other minerals, they shall have the right to remove all engines, tools, machinery, and buildings. And further, it is agreed that said second parties have the right to sub-lease said land for the purpose of boring for oil or other minerals; the said lessee or lessees being granted all the rights and privileges herein granted to the said party of the second part.

WITNESS our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_ 186  
 \_\_\_\_\_ (*Signature of lessor.*) (Seal.)  
 \_\_\_\_\_ (*Signature of lessee.*) (Seal.)  
 (*Witnesses.*)

PERSONALLY appeared before me, \_\_\_\_\_ a justice of the peace in and for the township of \_\_\_\_\_ within the county aforesaid and did acknowledge the signing and sealing of the above agreement to be act and deed.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ 186  
 \_\_\_\_\_ *Justice of the Peace.*

(91.)

#### AN ASSIGNMENT OF A LEASE.

KNOW ALL MEN BY THESE PRESENTS, That I (*name and residence of assignor*), for and in consideration of the sum of \_\_\_\_\_ dollars, lawful money of the United States, to me duly paid, by (*name and residence of assignee*), have sold, and by these presents do grant, convey, assign, transfer, and set over, unto the said (*name of assignee*), a certain indenture of lease, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ made by (*name of the lessor in the lease assigned*), whereby he leases to me the following-described premises (*here describe the premises briefly*), with all and singular the premises therein

mentioned and described, and the buildings thereon, together with the appurtenances.

TO HAVE AND TO HOLD the same unto the said (*the name of the assignee*), and his assigns, from the            day of            for and during all the rest, residue, and remainder yet to come of and in the term of            years mentioned in the said indenture of lease, and all my rights and privileges in and under said lease; subject, nevertheless, to the rents, covenants, conditions, and provisions therein also mentioned. And I do hereby covenant, grant, promise, and agree, to and with the said (*name of the assignee*), that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this  
day of            one thousand eight hundred and

(Signature.) (Seal.)

Sealed and delivered in the presence of

(92.)

# LANDLORD'S NOTICE TO QUIT FOR NON-PAYMENT OF RENT. SHORT FORM.

STATE OF            ss.            A.D. 186

To (*name of tenant*). You being in possession of the following-described premises, which you occupy as my tenant (*here describe the premises sufficiently to identify them*), in the city (*or township*) of            and county            aforesaid, are hereby notified to quit and deliver up to me the premises aforesaid, in fourteen days from this date, according to law, your rent being due and unpaid. Hereof fail not, or I shall take a due course of law to eject you from the same.

(Signature.)

(Witness.)

(93.)

# LANDLORD'S NOTICE TO QUIT FOR NON-PAYMENT OF RENT. ANOTHER FORM.

STATE OF            CITY OF            (date), 18

You are hereby notified to quit the premises situate (*state the situation of the premises, giving township or city, and street and number*), which I have leased to you, reserving rent, or pay and satisfy the rent due and in arrear, being \$            which amount was due on the            day of            18            and is hereby demanded (you having neglected or refused to pay the amount so reserved, as often as the same has grown due, according to the terms of our contract, and there being no goods on



the premises adequate to pay the rent so reserved, except such articles as are exempt from levy and sale by the laws of this State) within days from the date hereof, or I shall proceed against you as the law directs.

Yours, &c.

(Signature.)

To (name of tenant).

(94.)

#### LANDLORD'S NOTICE TO PAY RENT DUE, OR QUIT.

STATE OF

} ss.

COUNTY OF

(Name of landlord), landlord, against (name of tenant), tenant.

TAKE NOTICE, That you are justly indebted unto me in the sum of for rent of (home, store, or other premises, describing them generally), from (date when the rent was due and payable), which you are required to pay on or before the expiration of three days from the day of the service of this notice, or surrender up the possession of the said premises to in default of which shall proceed under the provisions of law to recover the possession thereof.

Dated this                      day of                      18

(Name of the landlord), Landlord.

To (name of the tenant), Tenant, in possession of the premises above specified.

(95.)

#### LANDLORD'S NOTICE TO LEAVE AT END OF THE TERM.

To (name and address of the tenant).

SIR, — Being in the possession of a certain messuage or tenement, with the appurtenances, situate (describe the premises briefly), which said premises were demised to you by me for a certain term, to wit, from the day of                      A.D. 18                      until the                      day of                      A.D. 18                      and which said term will terminate and expire on the day and year last aforesaid, I hereby give you notice that it is my desire to have again and repossess the said messuage or tenement, with the appurtenances, and I therefore do hereby require you to leave the same upon the expiration of the said hereinbefore mentioned term.

WITNESS my hand, this                      day of                      city of                      A.D. 18

(Signature.)

(Witness).

(96.)

#### LANDLORD'S NOTICE TO DETERMINE A TENANCY AT WILL.

STATE OF

ss.

A.D. 186

To (name of tenant). You being in possession of the following-described premises, which you occupy as my tenant at will (describing them

sufficiently to identify them), in the (city and street), aforesaid, are hereby notified to quit and deliver up to me the premises aforesaid (on such a day, stating here the day as far distant as is made necessary by the requisite length of notice), according to law, it being my intention to determine your tenancy at will. Hereof fail not, or I shall take a due course of law to eject you from the same.

(Signature.)

(Witness.)

(97.)

#### RECEIPT FOR RENT, IN USE IN NEW YORK.

##### *Rent payable*

The tenant mentioned below hereby agrees to pay the rent of the premises occupied and used by \_\_\_\_\_ on the first day of the term; and engages to clean the entries, stairs, stoops, and privy thereof, weekly, in turn with other occupants, and not incumber the same with furniture, fuel, or rubbish, nor keep any hog, dog, or fowl, nor deposit ashes or garbage on said premises, nor in the sinks or privies, nor split wood on the hearth, floor, or yard.

NEW YORK,

186

RECEIVED from (name of tenant paying), dollars, for \_\_\_\_\_ months  
rent, from 18 to 18 for (stone, brick,  
or other) house, No. \_\_\_\_\_ Street, in the city of New York.  
\$

## CHAPTER IX.

### GIFTS.

Any person competent to transact ordinary business may give whatever he or she owns to any other person; but a gift by a minor, an insane person, or a person under guardianship or under compulsion, would be voidable by the giver, or by a person acting for him or her by legal authority.

It is essential to a gift that it goes into effect at once and completely; and a promise to give cannot be enforced and has no legal validity, and may be revoked by the promisor, because it is entirely without consideration. This want of consideration is essential to a gift; for even if the transaction be called a gift, if any consideration which the law acknowledges as good enters into it, it is no longer a gift, but a sale or barter.

It is because there is no consideration for a gift that delivery is essential to its validity. But this delivery may be constructive, that is, it may be any such delivery as the nature of the thing and its actual position require: as a delivery of a part for the whole; or of a key to the lock under which the property is; or of a cumbrous mass, like a load of hay, for instance, by taking the donee (or person to whom the gift is made) near it, and pointing it out, with words of gift.

A gift made and completed by actual delivery passes the property absolutely, and cannot be revoked by the giver; with the exception stated in the last paragraph of this page.

A gift by an order on another party in possession is not complete until the order is presented and accepted; until then it may be revoked. So a gift by a check or order or draft may be revoked before payment or a binding acceptance thereof.

As a gift requires delivery to the donee, so it requires acceptance by him. If made perfect by delivery and acceptance, it is irrevocable by the giver; but if it be prejudicial to existing creditors, it is, as a transfer without consideration, void as to them. It is also void as to subsequent creditors, if it be made under actual or expected insolvency, or with a fraudulent purpose as to future creditors.

Gifts are sometimes made in expectation of death, or, in legal phrase, *causa mortis*. Such gifts are watched by the law with great care, because fraud is so easy in such cases, as the giver dies and can no longer deny or explain the transaction. Therefore, there must be evidence of a distinct delivery or transfer of possession at the time; and this delivery must not be in the way of a trust, or for any such purpose, but as an outright gift. If it be by a note, the note cannot be enforced against the representatives of the deceased, because wholly without consideration. If it be by a check on a bank, the check is invalid, unless it be presented and paid before the death of the drawer. But a gift of bank-bills *causa mortis* is valid, if the bills are delivered by the giver. A gift *causa mortis* by an order on one in possession is not valid, unless it is presented and accepted before the giver's death. And a gift *causa mortis*, even if accompanied by delivery, may be revoked by the giver, if he recovers and does not die.

## CHAPTER X.

## FINDING.

It is a general rule that the finder of lost property has a valid claim against all the world but the owner. The place in which, or the circumstances under which, it is found, generally make no exception to this rule; but sometimes they do. In Massachusetts, it was held that the finder of a pocket-book left by the owner in a shop could not hold it against the keeper of the shop in which it was found. But in England this case occurred: a man found on the floor of a shop a large parcel of bank-notes, and handed them to the shopkeeper for the owner. The finder soon after went abroad, and staid three years. On his return, inquiring of the shopkeeper, he learned that the bills had been advertised by him, and no one had claimed them. The finder then demanded them of the shopkeeper, offering to pay the cost of the advertisement. The shopkeeper refused to give them up, and the finder brought his action, and recovered judgment against the shopkeeper for the whole amount.

A finder of property need not take charge of it; but if he chooses to do so, he becomes what the law calls a depository, and is liable to the owner for any loss of or injury to the property from the finder's gross negligence. We think, although it is not quite certain, that a finder who takes care of property may charge the owner for necessary expense and labor in such care.

A finder who refuses the goods to the true owner, knowing him to be the true owner, is liable to an action for their value; but not if he refuses because he does not know him to be the true owner.

If a specific reward has been offered for lost property, the finder may refuse to give it up without payment of the reward; but it is not so if the offer be general only, as of a liberal reward.

If a person casts away and abandons any property as entirely worthless, the finder thereof may hold it against the original owner.

A finder of property who knows the true owner, and conceals the property, or appropriates it to his own use, is guilty of theft.

## CHAPTER XI.

### CONSIDERATION.

#### SECTION I.

##### THE NEED OF A CONSIDERATION.

It is an ancient and well-established rule of the common law prevailing in this country, that no promise can be enforced at law, unless it rests upon a sufficient *consideration*; by which word is meant a cause or reason for the promise. If it do not, it is called a *naked bargain*, and the promisor, even if he admits his promise, is under no legal obligation to perform a promise that he made without a *consideration*.

The word "consideration," as it is used in this rule, has a peculiar and technical meaning. It denotes some *substantial* cause for the promise. This cause must be one of two things: either a benefit to the promisor, or else an injury or loss to the promisee sustained by him at the instance and request of the promisor. Thus, if A promises B to pay him a thousand dollars in three months, and even promises this in writing, the promise is worthless in law if A makes it as a merely voluntary promise, without a consideration. But if B, or anybody for him, gives A to-day a thousand dollars in goods or money, and this was the ground and cause of the promise, then it is enforceable. And if A got nothing for his promise, but B, at the request of A, gave the same goods or money to C, this would be an equally good consideration, and the promise to pay B would be equally valid in law.

There are two exceptions to this rule. One is when the promise is made by a sealed instrument, or deed (every written instrument which is sealed is a deed). Here the law is said to imply a consideration; the meaning of which is, that it does not require that any consideration should be proved. The seal itself is said to be a consideration, or to import a consideration.

The second exception relates to negotiable paper, and is an instance in which the law-merchant has materially qualified the common law. We shall speak more fully of this exception when we treat of negotiable paper.

## SECTION II.

## WHAT IS A SUFFICIENT CONSIDERATION.

This requirement of a consideration sometimes operates harshly and unjustly, and permits promisors to break their word under circumstances calling strongly for its fulfilment. Courts have been led by this to say that the consideration is sufficient if it be a substantial one, although it be not an adequate one. This is the unquestionable rule now, and it is sometimes carried very far. In one case, an American court refused to inquire into the *adequacy* of the consideration,—or whether it was *equal* to the promise made upon it,—and said, if there was the *smallest spark* of consideration it was enough, if the contract was fairly made with a full understanding of all the material facts. Still, there must be some consideration.

The law detests litigation; at least courts say so; and therefore they consider any thing a sufficient consideration which arrests and suspends or terminates litigation. Thus the compromise, or forbearance, or mutual reference to arbitration, or any similar settlement of a suit or of a claim, is a good consideration for a promise founded upon it. And it is no defence to a suit on this promise to show that the claim or suit thus disposed of would probably have been found to have no foundation or substance. If there be an honest claim, which he who advances it believes to be well grounded, and which within a rational possibility may be so, this is enough; the court will not go on and try the validity of the claim or of the suit in order to test the validity of a promise which rests upon its settlement; for the very purpose for which it favors this settlement is the avoidance of all necessity of investigating the claim by litigation. But, for reasons of public policy, no promise can be enforced of which the consideration was the discontinuance of criminal proceedings; or any conduct by which public interests are harmed, as, for example, the procurement of the passage of a law by corrupt means.

If any work or service is rendered to one, or for one, and he requested the same, it is a good consideration for a promise of payment; and if he makes no promise, the law will imply the promise, that is, will suppose that he has made it, and will not permit him to deny it. The rule is the same as to payment for goods, or property of any kind, delivered to any one at his request.

No person can make another his debtor against that other's will, by a voluntary offer of work, or service, or money, or goods.

But if that other accept what is thus offered, and retain the benefit of it, the law will, generally, imply or presume that it was offered at the request of that other party, and will also imply his promise to pay for it, and will enforce the promise; unless it is apparent, or is shown, that it was offered and received as a mere gift.

**A promise is a good consideration for a promise; and it is one which frequently occurs in fact.**

**If A says to B, "If you will deliver goods to C, I will pay for them,"** although there is no obligation upon B to deliver the goods, if he does deliver them he furnishes a consideration for the agreement, and may enforce it against A.

**An agreement by two or more parties to refer disputes or claims between them to arbitration is not binding upon any of the parties, unless all have entered into it.**

**The principle that a promise is a good consideration for a promise** has been sometimes applied to subscription-papers: all who sign them being held, on the ground that the promise of each is a good consideration for the promises of the rest. The law on the subject of these subscription-papers, and of all voluntary promises of contribution, is substantially this: no such promises are binding unless something is paid for them, or unless some party for whose benefit they are made, — and this party may be one or more of the subscribers, — at the request, express or implied, of the promisors, and on the faith of the subscriptions, incurs actual expense or loss, or enters into valid contracts with other parties which will occasion expense or loss. As the objection to these promises, or the doubt about them, comes from the want of consideration, it may be cured by a seal to each name, or by one seal which all the parties consider the seal of each.

**It is to be regretted that the law does not regard a merely moral consideration as a sufficient legal consideration; but so it is.** Thus, it has been held in this country that a note given by a father to a person who had given needful medicines, food, and shelter to his sick son, who was of full age, was void in law, because there was no legal consideration. And the same doctrine was applied where a son made a similar promise for food and support to his aged father. If, in either case, the promise had been made *before* the food or other articles were supplied, or even a request made *before* the supply, then the supply of the food and support would have been a good consideration. But they had all been supplied before any request or promise, and nothing was left but the moral obligation of a father to compensate one who had supported his son, or of a son to support his father; and this the law does not deem sufficient to make even an express promise enforceable at law.

## SECTION III.

## AN ILLEGAL CONSIDERATION.

If the whole of a consideration, or if any part of the consideration of an entire and indivisible promise, be illegal, the promise founded upon it is void. Thus, where a note was given in part for the compounding of penalties and suppressing of criminal prosecutions, it was held to be wholly void and uncollectible. And where a part of the consideration of a note was spirituous liquors sold by the payee in violation of a statute, such note was held to be wholly void. But if the consideration consists of separable parts, and the promise consists of corresponding separable parts, which can be apportioned and applied, part to part, then each illegality will affect only the promise resting on it; for in fact there are many considerations and many promises.

If the consideration be entire and wholly legal, and the promise consists of separable parts, one legal and the other illegal, the promisee can enforce that part which is legal.

## SECTION IV.

## AN IMPOSSIBLE CONSIDERATION.

No contract or promise can be enforced by him who knew that the performance of it was wholly impossible; and therefore a promise to do a thing which is obviously and certainly impossible is not a sufficient consideration in law to sustain a promise by the other party. But if one makes a promise, he cannot always defend himself when sued for non-performance by showing that performance was impossible; for it may be his own fault, or his personal misfortune, that he cannot perform it. He had no right to make such a promise, and must answer in damages; or if he had a right to make it in the expectation of performance, and this has become impossible subsequently, — as by loss of property, for example, — this is his misfortune, and no answer to a suit on the promise. There are, however, obviously promises or contracts, which, from their very nature, must be construed as if the promisor had said, "I will do so and so, if I can." For example, if A promises to work for B one year, at \$20 a month, and at the end of six months is wholly disabled by sickness, he is not liable to an action by B for breach of his contract; and he can recover his pay for the time that he has spent in B's service. A mere want of money, which makes a pecuniary impossibility, is not regarded by the law as a legal impossibility.



## SECTION V.

## FAILURE OF CONSIDERATION.

If a promise be made upon a consideration which is apparently valuable and sufficient, but which turns out to be nothing; or if the consideration was originally good, but becomes wholly valueless before part performance on either side, — there is an end of the contract, and the promise cannot be enforced. And if money were paid on such a consideration, it can be recovered back. But only the sum paid can be so recovered, without any increase or addition as compensation for the plaintiff's loss and disappointment, unless there were fraud or oppression.

If the failure of consideration be partial only, leaving a substantial, though far less valuable, consideration behind, this may still be a sufficient foundation for the promise, if that be entire. The promisor may then be sued on the promise; but he will then be entitled, by deduction, set-off, or in some other proper way, to due allowance or indemnity for whatever loss he may sustain as to the other parts of the bargain, or as to the whole transaction, from the partial failure of the consideration. Thus, if he promised so much money for work done in such a way or as the price of a thing to be made and sold to him, if no work is done or the thing is not made or sold, there is an end of the promise, because the consideration has wholly failed. But if the work was done, but not as it should have been, or the thing made and sold, but not what it should have been, and the promisor accepted the work or the thing, he may now show that the consideration for his promise has partially failed, and may have a proportionate reduction in his promise, or in the amount he must pay. And if the promise be itself separable into parts, and a distinct part or proportion of the consideration failed, to which part some distinct part or proportion of the promise could be applied, that part of the promise cannot be enforced, although the residue of the promise may be.

If A agrees with B to work for him one year, or any stated time, for so much a month, or so much for the whole time, and, after working a part of the time, leaves B without good cause, it is the ancient and still prevailing rule that A can recover nothing in any form or way. It has, however, been held in New Hampshire, that A can still recover whatever his services are worth, B having the right to set-off or deduct the amount of any damage he may have sustained from A's breach of the contract. This view seems just and reasonable, although it has not been supported by adjudication in other States. If A agrees to sell to B five hundred barrels

of flour at a certain price, and, after delivering one-half, refuses to deliver any more, B can certainly return that half, and pay A nothing. But if B chooses to retain that half, or if he has so disposed of or lost it that he cannot return it, he must pay what it is worth, deducting all that he loses by the breach of the contract. And this case we think analogous to that of a broken contract of service; but B's liability to pay, even in the case supposed as to goods, has been denied by some courts.

A difficulty sometimes arises where A, at the request of B, undertakes to do something for B for which he is to be paid a certain price, and in doing it he departs materially from the directions of B and from his own undertaking. What are now the rights of the parties? This question arises most frequently in building contracts, in which there is often some departure from the original undertaking. The general rules are these: If B assent to the alteration, it is the same thing as if it were a part of the original contract. He may assent expressly, by word or in writing; or constructively, by seeing the work, and approving it as it goes on, or being silent; for silence under such circumstances would generally be equivalent to an approval. But if the change be one which B had a right, either from the nature of the change or the appearance of it, or A's language respecting it, to suppose would add nothing to the cost, then no promise to pay an increased price would be inferred from either an express or tacit approval. Generally, as we have seen, if A does or makes what B did not order or request, B can refuse to accept it, and, if he refuses, will not then be held to pay for it; but if he accepts it, he must pay for it. This consequence results, however, only from a voluntary acceptance. For if A choose, without any request from B, to add something to B's house, or make some alteration in it, which being done, cannot be undone or taken away without detriment to the house, B may hold it, and yet not be liable to pay for it; and A has no right to take it away, unless he can do so without inflicting any injury whatever on B. This rule would apply whether the addition or alteration were larger or smaller.

It is sometimes provided in building contracts that B shall pay for no alteration or addition unless previously ordered by him in writing. But if there be such provision, B would be liable for any alteration or addition he ordered in any way, or voluntarily accepted after it was made, when he could have rejected it.

So it is sometimes agreed that any additions or alterations shall be paid for at the same rate as the work contracted for. The law would imply this agreement if the parties did not make it expressly.

## CHAPTER XII.

## AGREEMENTS.

## SECTION I.

## THE LEGAL MEANING OF AGREEMENT.

No contract which the law will recognize and enforce exists until the parties to it have agreed upon the same thing in the same sense. Thus, in a case where the defendants by letter offered to the plaintiffs a certain quantity of "good" barley, at a certain price, plaintiffs replied: "We accept your offer, expecting you will give us fine barley and full weight." The jury found that there was a distinction in the trade between the words "good" and "fine," and the court held that there was not a sufficient acceptance to sustain an action for non-delivery of the barley. So, where a person sent an order to a merchant for a particular quantity of goods on certain terms of credit, and the merchant sent a less quantity of goods and at a shorter credit, and the goods were lost by the way, it was held by the court that the merchant must bear the loss; for there was no sale or contract between the parties.

There is an apparent exception to this rule when, for example, A declares that he was not understood by B, or did not understand B, in a certain transaction, and that there is therefore no bargain between them; and B replies by showing that the language used on both sides was explicit and unequivocal, and constituted a distinct contract. Here B would prevail. The reason is, that the law presumes that every person means that which he distinctly says. If A had offered to sell B his horse for twenty dollars, and received the money, and then tendered to B his cow, on the ground that he was thinking only of his *cow*, and used the word *horse* by mistake, this would not avoid his obligation, unless he could show that the mistake was known to B; and then the bargain would be fraudulent on B's part. This would be an extreme case; but difficult questions of this sort often arise. If A had agreed to sell, and had actually delivered, a cargo of shingles at "3.25," supposing that he was to receive that price for a "bunch," which contains five hundred, and B supposed that he had bought them at that price for a "thousand," which view should prevail? The answer would be, first, that if

there was, honestly and actually, a mutual mistake, there was no contract, and the shingles should be returned. But, secondly, if a jury should be satisfied, from the words used, from the usage prevailing where the bargain was made and known to the parties, or from other circumstances attending the bargain, that B knew that A was expecting that price for a bunch, B would have to pay it; and if they were satisfied that A knew that B supposed himself to be buying the shingles by the thousand, then A could not reclaim the shingles, nor recover more than that price. In such a case it was held that unless the two parties had the same understanding as to what the sum of \$3.25 paid for, there was no bargain.

In construing a contract, the actual and honest intention of the parties is always regarded as an important guide. But it must be their intention as expressed in the contract.

If the parties, or either of them, show that a bargain was honestly but mistakenly made which was materially different from that intended to be made, it would be a good ground for declaring that there was no contract.

#### MISTAKES.

Mistakes of fact in a contract can be corrected by the courts, but not mistakes of law,—no man being permitted to take advantage of a mistake of the law either to enforce a right or avoid an obligation; for it would be obviously dangerous and unwise to encourage ignorance of the law, by permitting a party to profit, or to escape, by his ignorance. But the law which one is required at his peril to know is the law of his own country. Ignorance of the law of a foreign state is ignorance of fact. In this respect the several States of the Union are foreign to each other. Hence, money paid through ignorance or mistake of the law of another State may be recovered back.

#### FRAUD.

Fraud annuls all obligation and all contracts into which it enters, and the law relieves the party defrauded. If both of the parties act fraudulently, neither can take advantage of the fraud of the other; and if one acts fraudulently, he cannot set his own fraud aside for his own benefit. Thus, if one gives a fraudulent bill of sale of property for the purpose of defrauding his creditors, *he* cannot set that bill aside and annul that sale, although his creditors who are injured by it may.

## SECTION II.

## WHAT IS AN ASSENT.

The most important application of the rule stated at the beginning of this chapter is the requirement that an acceptance of a proposition must be a simple and direct affirmative, in order to constitute a contract. For if the party receiving the proposition or offer accepts it on any condition, or with any change of its terms or provisions which is not altogether immaterial, it is no contract until the party making the offer consents to these modifications.

Therefore, if a party offers to buy certain goods at a certain price, and directs how the goods shall be sent to him, and the owner accepts the offer and sends the goods as directed, and they are lost on the way, it is the buyer's loss, because the goods were his by the sale, which was completed when the offer was accepted. But if the seller accepts the offer, and in his acceptance makes any material modification of its terms, and then sends the goods, and they are lost, it is his loss now, because the contract of sale was not completed.

Nor will a voluntary compliance with the conditions and terms of a proposed contract always make it a contract obligatory on the other party, unless there have been an accession to, or an acceptance of, the proposition itself. In general, if A says to B, If you will do this, I will do that; and B instantly does what was proposed to him, — this doing so is an acceptance, and A is bound. But if the doing of the thing may be something else than an acceptance of the offer, or if the thing may be done for some other reason than to signify an acceptance or assent, there must be express acceptance also, or there is no bargain.

## SECTION III.

## OFFERS MADE ON TIME.

It sometimes happens that one party makes another a certain offer, and gives him a certain time in which he may accept it. The law on this subject was once somewhat uncertain, but may now be considered as settled. It is this. If A makes an offer to B, which B at once accepts, there is a bargain. But it is not necessary that the acceptance should follow the offer instantaneously. B may take time to consider, and although A may expressly withdraw his offer at any time before acceptance, yet if he does not do so, B may accept within a reasonable time; and if this is done, A cannot say,

"I have changed my mind." What is a reasonable time must depend upon the circumstances of each case. If A when he makes the offer says to B that he may have a certain time wherein to accept it, and is paid by B for thus giving him time, he cannot withdraw the offer; or if he withdraws it, for this breach of his contract, the other party, B, may have his action for damages. If A is not paid for giving the time, A may then withdraw the offer at once, or whenever he pleases, provided B has not previously accepted it. But if B has accepted the offer before the time which was given expired, and before the offer was withdrawn, then A is bound, although he gave the time voluntarily and without consideration. For his offer is to be regarded as a continuing offer during all the time given, unless it be withdrawn. A railroad company asked for the terms of certain land they thought they might wish to buy. The owner said, in a letter, they might have it at a certain price, if they took it within thirty days. After some twenty-five days the railroad company wrote accepting the offer. The owner says: No, I have altered my mind; the land is worth more; and I have a right to withdraw my offer, because you paid me nothing for the time of thirty days allowed you. But the court held that he was bound, because this was an offer continued through the thirty days, unless withdrawn. They said that the writing when made was without consideration, and did not therefore form a contract. It was then but an offer to contract; and the party making the offer most undoubtedly might have withdrawn it at any time before acceptance. But he could not withdraw the offer after it was accepted, for then the minds of the parties met, and the contract was complete, and no withdrawal could then be made.

#### SECTION IV.

##### A BARGAIN BY CORRESPONDENCE.

When a contract is made by correspondence, the question occurs, At what time, or by what act, is the contract completed? The law, as now settled in this country, may be stated thus: If A writes to B proposing to him a contract, this is a continued proposition or offer of A until it reaches B, and for such time afterwards as would give B a reasonable opportunity of accepting it. It may be withdrawn by A at any time before acceptance; but is not withdrawn in law until a notice of withdrawal reaches B. This is the important point. Thus, if A in Boston writes to B in New Orleans, offering him a certain price for one hundred bales of cotton; and the next day alters his mind, and writes to B, withdrawing his

offer; if the first letter reaches B *before* the second reaches him, although *after* the second was written and mailed, B has a right to accept the offer *before* he gets the letter withdrawing it, and by his acceptance he binds A. But if B delays his acceptance until the second letter reaches him, the offer is then effectually withdrawn. It is a sufficient acceptance if B writes to A declaring his acceptance, and puts his letter into the post-office. It seems now quite clear that as soon as the letter leaves the post-office, or is beyond the reach of the writer, the acceptance is complete. That is, on the 5th of May, A in Boston writes to B in New Orleans, offering to buy certain goods there at a certain price. On the 8th of May, A writes that he has altered his mind, and cannot give so much, and mails the letter. On the 14th of May, B in New Orleans receives the first letter, and the next day, the 15th, answers it, saying that he accepts the offer, and mails his letter. On the 17th, he receives the second letter of A withdrawing the offer. Nevertheless the bargain is complete and the goods are sold. But if B had kept his letter of acceptance by him until he had received A's letter of withdrawal, he could not then have put his letter into the mail and bound A by his acceptance.

The party making the offer by letter is not bound to use the same means for withdrawing it which he uses for making it; because any withdrawal, however made, terminates the offer, if only it reaches the other party before his acceptance. Thus, if A in the case just supposed, a week after he has sent his offer by letter, telegraphs a withdrawal to B, and this withdrawal reaches him before he accepts the offer, this withdrawal would be effectual. So if he sent his offer by letter to England, in a sailing ship, and a fortnight after sent a revocation in a steamer, or by telegraph, if this last arrives before the first arrived and was accepted, it would be an effectual revocation.

#### SECTION V.

##### WHAT EVIDENCE MAY BE RECEIVED IN REFERENCE TO A WRITTEN CONTRACT.

If an agreement upon which a party relies be oral only, it must be proved by evidence. But if the contract be reduced to writing, it proves itself; and now no evidence whatever is receivable for the purpose of varying the contract or affecting its obligations. The reasons are obvious. The law prefers written to oral evidence, from its greater precision and certainty, and because it is less open to fraud. And where parties have closed a negotiation and reduced

the result to writing, it is presumed that they have written all they intended to agree to, and, therefore, that what is omitted was finally rejected by them.

But some evidence may always be necessary, and therefore admissible; as evidence of the identity of the parties to the contract, or of the things which form its subject-matter. Quite often, neither the court nor the jury can know what person, or what thing, or what land, a contract relates to, unless the parties agree in stating this, or evidence shows it. The rule on this subject is, that while no evidence is receivable to *contradict* or *vary* a written contract, evidence may be received to explain its meaning, and show what the contract is in fact.

There are some obvious inferences from this rule. The first is, that as evidence is admissible only to explain the contract, if the contract needs no explanation,—that is, if it be by itself perfectly explicit and unambiguous,—evidence is inadmissible; because it is wholly unnecessary, and can be offered only to vary the meaning and force of the contract, and that is not permitted. Another, following from this, is, that if the evidence purports, under the name of explanation, to give to the contract a meaning which its words do not fairly bear, this is not permitted; because such evidence would in fact make a new contract.

A frequent use of oral evidence is to explain, by means of persons experienced in the particular subject of the contract, the meaning of technical or peculiar words and phrases; and such witnesses are called experts, and are very freely admitted.

It may be remarked, too, that a written receipt for money is not within the general rule as to written contracts, being always open not only to explanation, but even to contradiction, by extrinsic evidence. And this is true of the *receipt part* of any instrument. If a written instrument not only recites or acknowledges the receiving of money or goods, but contains also a contract or grant, such instrument, as to the contract or grant, is no more to be affected by any evidence than if it contained no receipt; but as to the receipt itself, it may be varied or contradicted in the same manner as if the instrument contained nothing else. Thus, if a deed recites that it was made in “consideration of ten thousand dollars, the receipt whereof is hereby acknowledged,” the grantor may sue for the money, or any part of it, and prove that the amount was not paid; for this affects only the *receipt part* of the deed. But he cannot say that the grant of the land was void because he never had his money, nor that any agreement the deed contained was void for such a reason; because, if he proved that the money was not paid, and offered this evidence for the purpose of thus annulling his



grant or agreement, he would be offering evidence to affect the *other part* of the deed; and that he cannot do.

A legal inference from a written promise can no more be rebutted by evidence than if it were written. Thus, if A, by his note, promises to pay B a sum of money in sixty days, he cannot, when called upon, resist the claim by proving that B, when the note was made, agreed to wait ninety days; and if A promise in writing to pay money, and no time is set, this is by force of law a promise to pay on demand; and evidence is not receivable to show that a distant period was agreed upon.

Generally speaking, all written instruments are construed and interpreted by the law according to the simple, customary, and natural meaning of the words used.

It should be added, that when a contract is so obscure or uncertain that it must be set wholly aside, and regarded as no contract whatever, it can have no force or effect upon the rights or obligations of the parties, but all of these are the same as if they had not made the contract.

## SECTION VI.

### CUSTOM OR USAGE.

A custom or usage, which may be regarded as appropriate to a contract, has often great weight in reference to it. This it may have, first, as to the construction or meaning of its words; and next, as to the intention or understanding of the parties.

The ground and reason for this influence of a custom is this: If it exist so widely and uniformly among such persons as make the contract, and for so long a time, that every one of them must be considered as knowing it, and acting with reference to it, then it ought to have the same force as if both parties expressly adopted it; because each party has a right to think that the other acted upon it.

Sometimes this is carried very far. In one English case, a man had agreed to leave in a certain rabbit warren *ten thousand rabbits*; and the other party was permitted to prove that, by the usage of that trade, a thousand meant one hundred dozen, or *twelve hundred*. In an American case, a man agreed to pay a carpenter twelve shillings a day for every man employed by him about a certain building; the carpenter was permitted to prove that, by the usage of that trade, "a day" meant ten hours' work; and as his men had worked twelve and a half, he was permitted to charge fifteen shillings, or for one and one-fourth days' work, for every day so spent.

In these cases the custom affected the meaning of the words. But it also has the effect of words; as if a merchant employed a broker to sell his ship, and nothing was said about terms, and the broker did something about it, and the ship was sold: if the broker could prove a universal and well-established custom of that place, that for doing what he did under the employment he was entitled to full commissions, he would have them, as much as if they were expressly promised.

Any custom will be regarded by the court which comes within the *reason* of the rule that makes a custom a part of the contract. It comes within the reason only when it is *so far* established, and *so well* known to the parties, that it must be supposed that their contract was made with reference to it. For this purpose, the custom must be established and not casual, uniform and not varying, general and not personal, and known to all the parties. But the degree in which these characteristics must belong to the custom will depend in each case upon its peculiar circumstances. Let us suppose a contract for the making of an article which has not been made until within a dozen years, and only by a dozen persons. Words are used in this contract of which the meaning is to be ascertained; and it is proved that these words have been used and understood in reference to this article, always, by all who have ever made it, in one way. Then this custom will be permitted to explain and interpret the words of the parties. But if the article had been made a hundred years or more, in many countries and by multitudes of persons, the evidence of this use of these words by a dozen persons in a dozen years might not be sufficient to give to this practice the force of *custom*.

Other facts must be considered; as how far the meaning sought to be put on the words by custom varies from their common meaning in the dictionary, or from general use; and whether other makers of the article use these words in various senses, or use other words to express the alleged meaning. Because the *main question* is always this: Can it be said that both parties *must* have used, or *ought* to have used, these words in this sense, and that each party had good reason to believe that the other party so used them? Thus, when the brief but violent "*Morus multicaulis*" (or mulberry) speculation prevailed, a few years ago, a man made a contract to sell and deliver a certain number of the trees "a foot high;" and the buyer was permitted to prove that, by the usage and custom of all who dealt in that article, the length was measured to the top of the ripe wood only, rejecting the green and immature top; and the "foot high" was to be so understood.

No custom, however, can be proved or permitted to influence the construction of a contract, or vary the rights of the parties, if the custom itself be illegal. For this would be to permit, or even oblige, parties to break the law, because others had broken it.

Nor would the courts sanction a custom which was in itself unreasonable and oppressive. There was a vessel cast ashore on the coast of Virginia, and the master sold the cargo on the spot; and on trial the jury found that he was authorized to do so by the usage there; but the Supreme Court of Massachusetts, where the ship and cargo were insured, said that the usage was unreasonable, and they would not allow it. The Supreme Court of Pennsylvania in one case refused to allow a usage, as unreasonable, by which plasterers charged half the size of the windows at the price per square yard agreed on for the plastering of a house.

Lastly, no custom, however universal, or old, or known (unless it has actually become law), has any force whatever, if the parties see fit to exclude and refuse it by the words of their contract, or provide that the thing which the custom affects shall be done in a way different from the custom. For a custom can never be set up against either the express agreement or the clear intentions of the parties.

#### HOW CONTRACTS OR AGREEMENTS SHOULD BE MADE.

Every agreement should be written, and signed by both parties, and witnessed, where this can be done; although the law absolutely requires witnesses in very few cases, and in none of mere contract. It is prudent, however, to have them; for it is a rule of law that things which cannot be proved and things which do not exist are the same in the law.

Every thing agreed upon should be written out distinctly, and care should be taken to say all that is meant, and just what is meant, and nothing else; for, as above stated, it is a rule of law that no oral testimony shall control a *written agreement*, unless fraud can be proved. Against fraud nothing stands.

#### FORMS ANNEXED TO THIS CHAPTER.

- (98.) A general agreement, sufficient for many purposes.
- (99.) A general agreement, as used in the Western States.
- (100.) A general contract for mechanics' work.
- (101.) An agreement for purchase and sale of land, in use in the Middle States.
- (102.) An agreement for sale of land, in use in the Western States.

- (103.) An agreement for warranty deed, in use in the Western States.
- (104.) A contract to convey real estate, in use in the Middle States.
- (105.) An agreement for the purchase of an estate, in use in New England.
- (106.) An agreement for the sale of an estate by private contract.
- (107.) An agreement to be signed by an auctioneer, after a sale by auction.
- (108.) An agreement to be signed by the purchaser, after a sale by auction.
- (109.) An agreement to make an assignment of a lease.
- (110.) An agreement for making a quantity of manufactured articles.
- (111.) An agreement between a trader and a book-keeper.
- (112.) An agreement for damages in laying out or altering a road.
- (113.) An agreement between a person retiring from the active part of a business and another who is to conduct the same for their mutual benefit.
- (114.) A brief building contract.

(98.)

#### A GENERAL AGREEMENT, SUFFICIENT FOR MANY PURPOSES.

##### MUTUAL AGREEMENT OF TWO.

A. B., of (*place of residence, and business or profession*), and C. D., of (*as before*), have agreed together, at (*place*), on (*the day should always be named*), and do hereby promise and agree to and with each other, as follows: A. B., in consideration of the promises hereinafter made by C. D. (*if there are any such promises*), and of (*here state any other consideration which A. B. has*), promises and agrees to and with C. D., that (*here set forth, as above directed, the whole of what A. B. undertakes to do*).

And C. D., in consideration (*set forth consideration and promise as before*).

WITNESS our hands, to two copies of this agreement interchangeably.

A. B.  
C. D.

Signed and interchanged in presence of

E. F.  
G. H.

(99.)

#### A GENERAL AGREEMENT, AS USED IN THE WESTERN STATES.

ARTICLES OF AGREEMENT, Made this                      day of  
in the year of our Lord one thousand eight hundred and sixty-  
between                      party of the first part, and                      party of the  
second part,

WITNESSETH, That the said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payments and perform the covenants hereinafter mentioned on \_\_\_\_\_ part to be made and performed, the said party of the first part will

And the said party of the second part hereby covenants and agrees to pay to said party of the first part the sum of \_\_\_\_\_ dollars, in the manner following : \_\_\_\_\_ dollars cash in hand paid, the receipt whereof is hereby acknowledged, and the balance

with interest at the rate of \_\_\_\_\_ per centum per annum, payable \_\_\_\_\_ annually. And in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on \_\_\_\_\_ part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by \_\_\_\_\_ on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by \_\_\_\_\_ sustained, and \_\_\_\_\_ shall have the right to

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and assigns of the respective parties.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of

(100.)

#### GENERAL CONTRACT FOR MECHANICS' WORK.

CONTRACT, Made this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_ by and between \_\_\_\_\_ of \_\_\_\_\_ of the first part, and \_\_\_\_\_ of \_\_\_\_\_ of the second part,

WITNESSETH, That the party of the first part, for the consideration hereinafter mentioned, covenants and agrees with the party of the second part to perform in a faithful and workmanlike manner the following specified work, viz.:

And, in addition to the above, to become responsible for all materials delivered and receipted for; the work to be commenced \_\_\_\_\_ and to be completed and delivered, free from all mechanic or other liens, on or before the \_\_\_\_\_ day of \_\_\_\_\_. And the party of the second part covenants and agrees with the party of the first part, in consideration of the faithful performance of the above specified work, to pay to the party of the first part the sum of \_\_\_\_\_ dollars, as follows:

And it is further mutually agreed by and between both parties, that in case of disagreement in reference to the performance of said work, all questions of disagreement shall be referred to \_\_\_\_\_ and the award of said referees, or a majority of them, shall be binding and final on all parties.

IN WITNESS WHEREOF, We hereunto set our hands and seals, on the day and year first above written.

(Signatures.) (Seals.)

Executed in presence of

(101.)

AN AGREEMENT FOR PURCHASE AND SALE OF LAND, IN USE  
IN THE MIDDLE STATES.

AGREEMENT, Made and concluded the \_\_\_\_\_ day of  
A.D. 18 \_\_\_\_\_ by and between \_\_\_\_\_ of the State of \_\_\_\_\_ of the  
first part, and \_\_\_\_\_ of the State of \_\_\_\_\_ of the second part:

WHEREAS, The party of the second part hath agreed to purchase from the party of the first part, either on his own account or for whom it may concern, certain \_\_\_\_\_ land in \_\_\_\_\_ township \_\_\_\_\_ county, and State of \_\_\_\_\_

And it is agreed that the party of the second part shall have the right to divide and subdivide said land in such manner, and appropriate to his own use so much thereof, as he may see fit, giving and paying to the party of the first part the sum of \_\_\_\_\_ dollars, on or before the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 18 \_\_\_\_\_ and reserving to his own use any amount for which the whole or any be sold over the said dollars.

AND THESE ARTICLES FURTHER WITNESS, That the party of the first part, for and in consideration of the premises and the sum of \_\_\_\_\_ lawful money, to him paid by the party of the second part, at and before the execution hereof, doth covenant, promise, grant, and agree with the party of the second part, his heirs and assigns, upon sale of said lands being made by the party of the first part, to sufficiently grant, convey, and assure said lands, with the appurtenances, to the said party of the second part, or such person or persons as he may direct; and in default of the said party of the second part paying the amount hereinbefore specified at the time mentioned, then these articles are to be deemed and considered cancelled to all intents and purposes, the same as though they never had been made.

IN WITNESS WHEREOF, The parties hereto have hereunto set their hands and seals, the day and year first aforesaid.

(Signatures.) (Seals.)

Sealed and delivered in presence of

(102.)

## AN AGREEMENT FOR SALE OF LAND, IN USE IN THE WESTERN STATES.

ARTICLES OF AGREEMENT, Made this \_\_\_\_\_ day of \_\_\_\_\_ in  
the year one thousand eight hundred and sixty-\_\_\_\_\_ between  
of the first part, and \_\_\_\_\_ of the second part,

WITNESSETH, That the party of the first part, at the request of the party of the second part, and in consideration of the money to be paid, and the covenants as herein expressed to be performed, by the party of the second part (the prompt performance of which payments and covenants being a condition precedent, and time being of the essence of said condition), hereby agree to sell to the said party of the second part, all certain lot and parcel of land, situate in \_\_\_\_\_ county of \_\_\_\_\_ and State of \_\_\_\_\_ known and designated as follows, viz.:

with the privileges and appurtenances thereto belonging.

And the said party of the second part, in consideration of the premises, hereby agrees to pay the party of the first part, his or their executors, administrators, or assigns, \_\_\_\_\_ in \_\_\_\_\_ days, the sum of \_\_\_\_\_ dollars,  
as follows, viz.:

with interest at the rate of \_\_\_\_\_ per cent per annum, from \_\_\_\_\_ to be paid semi-annually in each year, on the whole sum from time to time remaining unpaid. And also that he will well and faithfully, in due season, pay, or cause to be paid, all ordinary taxes assessed for revenue purposes upon said premises, or any part thereof, subsequent to the year 18 \_\_\_\_\_. And also all other assessments which now are, or may be hereafter, charged or assessed upon or against said premises, or any part thereof. But in case the said party of the second part fail to pay any or all such taxes or assessments upon said premises or appurtenances, or any part thereof, whenever and as soon as the same shall become due and payable; and the party of the first part shall pay from time to time, or at any time, any or all such taxes or assessments, or cause the same to be paid,—the amount of any and all such payments so made by the party of the first part, with interest thereon from the date of payment, shall immediately thereupon become an additional consideration, and payment thereof shall be made by the party of the second part hereto, for the premises herein agreed to be conveyed.

And the said party of the first part further covenants and agrees with the said party of the second part, that upon the faithful performance by said party of the second part of \_\_\_\_\_ undertaking in his behalf, and of the payment of principal and interest of the sum above mentioned, in the manner specified, he the said party of the first part shall and will, without delay, well and faithfully execute, acknowledge, and deliver in person, or by attorney duly authorized, to the party of the second part, \_\_\_\_\_ heirs or assigns, a deed of conveyance of all the right, title, and interest of the party of the first part, of, in, and to the above-described

premises, with the appurtenances, with full covenants of warranty, also of waiver and release of all rights of the said party of the first part, resulting from the laws of this State pertaining to the exemption of homesteads.

AND IT IS MUTUALLY COVENANTED AND AGREED, By and between the parties hereto, that in case default shall be made in the payments of principal or interest at the time or any of the times above specified, for the payment thereof, and for                      days thereafter, this agreement, and all the preceding provisions hereof, shall be null and void, and no longer binding, at the option of said party of the first part,                      representatives or assigns; and all the payments which shall then have been made thereon, or in pursuance hereof, absolutely and for ever forfeited to the said party of the first part; or at the election of the said party of the first part, representatives and assigns, the covenants and liability of said party of the second part shall continue and remain obligatory upon the said party of the second part, and may be enforced, and the said consideration money, and every part thereof, with the annual interest as above specified, be collected, by proper proceedings in law or equity, from the said party of the second part,                      heirs, executors, administrators, or assigns.

AND IT IS FURTHER MUTUALLY COVENANTED AND AGREED, By and between the parties hereto, that in case of default in the payment stipulated to be made by the said party of the second part, or any part thereof, and the election of the party of the first part,                      representatives or assigns, to consider the foregoing contract of sale at an end, and prior payments forfeited, the said party of the second part,                      heirs, representatives, or assigns, who may have possession, or the right of possession, of said premises at the time of such default, or at any time thereafter, shall be considered, and are hereby agreed and declared to be, in law and equity, the tenant or tenants at will of said party of the first part,                      representatives and assigns, on a rent equal to an interest of ten per cent per annum on the whole sum of the purchase-money above specified, payable quarter-yearly in advance from the day of such default in payment of principal or interest. And after such default in payment, and election to consider the above contract of sale as void, the said party of the first part,                      representatives and assigns, shall and may have and exercise all the powers, rights, and remedies provided by law or equity to collect such rent, or to remove such tenant or tenants, the same as if the relation of landlord and tenant hereby declared were created by an original absolute lease for that purpose, on a special rent, payable quarterly on a tenure at will. And that in such case the said tenant or tenants shall and will pay, or cause to be paid, all taxes, assessments, ordinary and extraordinary, which may be laid or assessed on such premises or any part thereof, during the continuance of such tenancy; and will not permit or suffer any waste or damage to said premises or the appurtenances, but will keep and deliver up, on the termination of such tenancy, the said premises and appurtenances, in as good order and repair (ordinary wear and decay, and unavoidable injury by the elements, excepted) as they were in at the commencement of said tenancy.

IN WITNESS WHEREOF, The party of the first part                      and the party of the second part, in                      own proper person, have hereunto



respectively set their hands and seals, on the day and year first above written.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of

(103.)

AN AGREEMENT FOR WARRANTY DEED, USED IN THE WESTERN STATES.

ARTICLES OF AGREEMENT, Made this                      day of                      in the year of our Lord one thousand eight hundred and sixty-                      between party of the first part, and                      party of the second part,

WITNESSETH, That said party of the first part hereby covenants and agrees, that if the party of the second part shall first make the payment and perform the covenants hereinafter mentioned on                      part to be made and performed, the said party of the first part will convey and assure to the party of the second part, in fee-simple, clear of all incumbrances whatever, by a good and sufficient warranty deed, the following lot, piece, or parcel of ground, viz.:

And the said party of the second part hereby covenants and agrees to pay to said party of the first part the sum of                      dollars, in the manner following:                      dollars, cash in hand paid, the receipt whereof is hereby acknowledged, and the balance

with interest at the rate of                      per centum per annum, payable                      annually, on the whole sum remaining from time to time unpaid, and to pay all taxes, assessments, or impositions that may be legally levied or imposed upon said land, subsequent to the year 18

And in case of the failure of the said party of the second part to make either of the payments, or perform any of the covenants on                      part hereby made and entered into, this contract shall, at the option of the party of the first part, be forfeited and determined, and the party of the second part shall forfeit all payments made by                      on this contract, and such payments shall be retained by the said party of the first part in full satisfaction and in liquidation of all damages by                      sustained, and                      shall have the right to re-enter and take possession of the premises aforesaid.

It is mutually agreed that all the covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, and assigns of the respective parties.

IN WITNESS WHEREOF, The parties to these presents have hereunto set their hands and seals, the day and year first above written.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of

(104).

## A CONTRACT TO CONVEY REAL ESTATE, IN USE IN THE MIDDLE STATES.

THIS ARTICLE OF AGREEMENT, Made and entered into the day of                    one thousand eight hundred and                    between                    of the first part, and                    of the second part,

WITNESSETH, as follows: The said party of the first part hereby agrees to sell unto the said party of the second part all that parcel of land situated, bounded, and described as follows. That is to say

for the sum of

to be paid by the said party of the second part, in manner and at the times hereinafter mentioned and covenanted, on the part of the said party of the second part. And the said party of the first part further agrees, that on the                    day of                    on receiving from the said party of the second part the sum of

the said party of the first part shall and will, at                    at                    own proper cost and expense, execute and deliver to the said party of the second part; or to                    assigns, a proper deed of conveyance, duly acknowledged, for the conveying and assuring to                    them the fee-simple of the said premises, free from all incumbrances,

which deed of conveyance shall contain a general warranty, and the usual full covenants.

And the said party of the second part hereby agrees to purchase of the said party of the first part the premises above mentioned, at and for the price and sum above mentioned, and to pay to the said party of the first part the purchase-money therefor, in manner and at the times following, to wit:

And it is further agreed by and between the parties to these presents, that the said party of the first part shall have and retain the possession of said premises, and be entitled to the rents and profits thereof until the                    day of                    when full possession of the same shall be delivered to the said party of the second part, by the said party of the first part.

And it is understood and agreed, that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties.

And it is further hereby agreed, that in case the said party of the first part shall fail or refuse to execute and deliver a proper deed of conveyance in manner and at the time and place above specified for that purpose, provided the party of the second part shall be ready to fulfil and perform the covenants then to be fulfilled on                    part; or in case the said party of the second part shall fail or refuse to pay the said sum of

at the time and place as above agreed upon, provided the party of the first

part shall be ready to deliver such deed of conveyance, as aforesaid, — then the party so failing shall and will pay to the other party, or assigns, the sum of \_\_\_\_\_ dollars, which sum is hereby declared fixed and agreed upon, as the liquidated amount of damages to be paid by the party so failing as aforesaid, for \_\_\_\_\_ non-performance.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of \_\_\_\_\_

(105.)

AN AGREEMENT FOR THE PURCHASE OF AN ESTATE, IN USE IN  
NEW ENGLAND.

ARTICLES OF AGREEMENT, Had, made, concluded, and agreed upon  
this \_\_\_\_\_ day of \_\_\_\_\_ A.D. \_\_\_\_\_ between \_\_\_\_\_ of  
\_\_\_\_\_ of the one part, and \_\_\_\_\_ of \_\_\_\_\_ of the other part.  
First, the said (*seller*), in consideration of the sum of \_\_\_\_\_ to him  
paid by the said (*buyer*), at or before the sealing and delivery of these  
presents, and of the further sum of \_\_\_\_\_ to be paid as hereinafter is  
mentioned, doth hereby for himself, his heirs, executors, and administra-  
tors, and every of them, covenant, promise, and agree, to and with the  
said \_\_\_\_\_ his heirs, executors, and administrators, and every of them,  
by these presents, that he the said \_\_\_\_\_ his heirs and assigns (and all  
and every other person and persons whatsoever claiming or to claim any  
right, title, or interest under him, or any other person or persons whatso-  
ever, of, in, or to the lands \_\_\_\_\_ and premises hereinafter mentioned),  
shall and will, at the proper costs and charges of the said  
his heirs and assigns (except fees to counsel), on or before the  
day of \_\_\_\_\_ next ensuing, by such conveyances, assurances, ways,  
and means in the law, as he the said \_\_\_\_\_ his heirs and assigns, or  
his or their counsel, shall reasonably devise, advise, or require, well and  
sufficiently grant, sell, release, convey, and assure to the said  
and his heirs, or to whom he or they shall appoint or direct, all that  
situate \_\_\_\_\_ now in the tenure or occupation of  
or his assigns, with covenants to be therein contained, that the said prem-  
ises, at the time of such conveyance, are free from all incumbrances and  
demands whatsoever (except \_\_\_\_\_) and all other usual and reason-  
able covenants. In consideration whereof, the said \_\_\_\_\_ for himself,  
his heirs, executors, administrators, and assigns, doth hereby covenant,  
promise, and agree, to and with the said \_\_\_\_\_ his heirs, executors, and  
administrators, by these presents, that he the said \_\_\_\_\_ his heirs, exec-  
utors, or administrators, or some of them, shall and will well and truly  
pay, or cause to be paid, unto the said \_\_\_\_\_ his heirs, executors, or  
administrators, the aforesaid sum of \_\_\_\_\_ at the time of executing  
the said conveyances. And for the true performance of all and every the  
covenants and agreements aforesaid, each of the said parties to these pres-  
ents doth hereby bind himself, his heirs, executors, and administrators, to  
the other of them, his heirs, executors, administrators, and assigns, in the  
penal sum of \_\_\_\_\_

IN WITNESS WHEREOF, The said parties to these presents have hereunto set their hands and seals, the day and year first above written.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of

**An agreement for the sale of lands should always state the covenants, whether of general or special warranty, which it is intended that the contemplated conveyance shall contain. We give below some of the more common provisions which may be inserted in an agreement for the purchase of land.**

COVENANTS, PROVISOS, AND AGREEMENTS, WHICH MAY BE INSERTED IN THE PRECEDING FORM.

1. *Covenant that the vendor, before the purchase is completed, shall not commit waste, or grant any new leases.*

And also that the said (*the seller*) shall not nor will, in the mean time, cut down any timber or trees, or commit any waste or spoil whatsoever, in or upon the premises, or any part thereof, nor shall or will grant any new leases of the premises, or any part thereof, without the privity or consent of the said (*the buyer*), or his heirs or assigns.

2. *Another covenant, for the payment of the purchase-money.*

And the said (*the buyer*) doth hereby covenant and agree to and with the said (*the seller*), his heirs, executors, and administrators, that upon sealing and executing such conveyance and assurance of the said unto him and them as aforesaid, according to the true intent of these presents, he the said his heirs, executors, or administrators, shall and will pay, or cause to be paid, unto the said his heirs, executors, or administrators, the said sum of in full for the purchase of the said premises.

*Or there may be an agreement to retain part of the purchase-money to pay off an incumbrance, as follows:—*

And it is agreed between the said parties that the said shall or may retain out of the said purchase-money the sum of for the purpose of paying off the sum of secured by a mortgage on the said premises, given by the said to bearing date when the said sum shall become due by virtue of the said mortgage.

3. *This agreement may be inserted.*

And it is agreed, that if the counsel of the said shall not approve of the title of the said to the said premises, this agreement shall be void.

4. *This proviso may be inserted.*

Provided always, and it is hereby mutually covenanted and agreed, by and between the parties to these presents, for themselves and their respective heirs, in manner as follows, viz.: That in case the counsel of the

said (*the buyer*) shall not approve of the title of him the said (*the seller*), to the said \_\_\_\_\_ or in case (*the buyer*), on his view thereof (he not having ever viewed the same), will not proceed in the purchase thereof, and shall and do, within one month next after the date hereof, give notice, in writing, to the said \_\_\_\_\_ (or to \_\_\_\_\_ of \_\_\_\_\_), that he will not purchase the said \_\_\_\_\_ then and in either of the cases these presents shall be absolutely void; and that then he the said (*the seller*), his heirs, executors, or administrators, shall and will, within six months now next ensuing, well and truly repay or cause to be repaid unto the said (*the buyer*), his heirs, executors, administrators, or assigns, the said sum of \_\_\_\_\_ so by him now paid as aforesaid, together with legal interest for the same, from henceforth to be computed until payment thereof.

5. *A provision in articles of purchase, in case of the delay or default of either party.*

that if by reason of any delay, neglect, or default, by or on the part of the said (*the purchaser*), or his heirs, or his or their counsel or agents, the said conveyances of the said estates and premises shall not be ready and tendered to the said (*the vendor*), or his heirs, to be executed, on or before the said \_\_\_\_\_ day of \_\_\_\_\_ then and in such case the said \_\_\_\_\_ his \_\_\_\_\_ shall and will pay and allow to the said \_\_\_\_\_ his \_\_\_\_\_ interest for the said sum of \_\_\_\_\_ at the rate of \_\_\_\_\_ to be computed from the \_\_\_\_\_ day of \_\_\_\_\_ until the said (*the principal sum*) shall be paid as aforesaid; but if, by reason of any delay, neglect, or default, by or on the part of the said \_\_\_\_\_ or any claiming under him, such conveyances as aforesaid shall not be executed on or before the said \_\_\_\_\_ day of \_\_\_\_\_ then and in such case no such interest as aforesaid shall be paid or allowed during the time of such delay of the said \_\_\_\_\_

6. *An agreement that if a good title, &c., cannot be made on, &c., the premises shall stand as security for the money paid down, &c.*

It is hereby further agreed and declared by and between all the said parties to these presents, and particularly the said (*the vendors*) do hereby agree and declare, that in case they cannot make out a good title to, and execute and perfect such conveyances and assurances of, the premises as aforesaid, on or before the \_\_\_\_\_ day of \_\_\_\_\_ now next ensuing, then the said \_\_\_\_\_ and every part thereof, shall remain and be a security to the said (*the purchaser*), for securing to him, his \_\_\_\_\_ the repayment of the said sum of \_\_\_\_\_ now by him paid as aforesaid, at or upon the said \_\_\_\_\_ day of \_\_\_\_\_ now next ensuing, together with interest for the same after the rate of \_\_\_\_\_ from henceforth in the mean time and until payment thereof, which interest in such case they the said (*the purchasers*) do hereby for themselves, severally and respectively, and for their several and respective heirs, \_\_\_\_\_ promise and agree to pay accordingly, and then, also, in such case all such rents, \_\_\_\_\_ as he the said (*the purchaser*) shall have received, by or out of the premises as aforesaid, shall be deemed and allowed by him in part of payment of the same (*the principal purchase-money*), and interest.

7. That if the other parties do not perform their covenants, the purchaser shall not be obliged to perform his.

And it is mutually agreed and declared to be the true intent and meaning of these presents, that if it shall happen that any of them the said their heirs, shall neglect to perform his or their parts of the covenants and agreements herein contained, that then, and in any such case, the said his heirs, executors, and administrators, or any of them, shall not be hereby obliged to perform his and their covenants herein contained, or any of them, but shall, if he shall think fit, be absolutely discharged from the same.

(106.)

AN AGREEMENT FOR THE SALE OF AN ESTATE BY PRIVATE CONTRACT.

ARTICLES OF AGREEMENT, Made this                      day of  
between                      of                      and                      of  
The said                      agrees to sell the said                      all that  
with the appurtenances, for the sum of                      and will, on or before  
the                      day of                      next, on the receipt of the said sum of  
at the charges of the said                      execute a proper conveyance thereof, with a covenant of general warranty and against incumbrances, to the said                      and his heirs and assigns.  
And the said                      agrees, that, on the execution of such conveyance, he will pay the said sum of                      to the said                      or his assigns.

And it is further agreed, that the conveyance shall be prepared by and at the expense of the said                      to the approbation of the respective counsel of the said                      and                      and that all taxes and outgoings in respect of the premises in the mean time shall be paid by the said                      And it is agreed, that the said                      shall receive the rents and profits of the premises, from                      next, to his proper use. And it is agreed, that if the said conveyance shall not be executed, and the purchase-money paid on or before the                      day of                      then the said                      shall pay interest for the same from the same day, unto the said                      after the rate of                      per cent per annum.

IN WITNESS WHEREOF,

(Signatures.)      (Seals.)

(107.)

AN AGREEMENT TO BE SIGNED BY AN AUCTIONEER, AFTER A SALE BY AUCTION.

I HEREBY ACKNOWLEDGE, That                      has been this day declared the highest bidder and purchaser of (*describe the real estate*), at the sum of                      and that he has paid into my hands the sum of                      as

a deposit, and in part payment of the purchase-money; and I hereby agree that the vendor shall in all respects fulfil the conditions of sale.<sup>1</sup>

WITNESS my hand,

(Signatures.) (Seals.)

(108.)

#### AN AGREEMENT TO BE SIGNED BY THE PURCHASER, AFTER A SALE BY AUCTION.

I HEREBY ACKNOWLEDGE, That I have this day purchased by public auction all that (*describe the estate*) for the sum of                      and have paid into the hands of                      the sum of                      as a deposit and in part payment of the said purchase-money; and I hereby agree to pay the remaining sum of                      unto (*the vendor*), at                      on or before the                      day of                      and in all other respects, on my part, to fulfil the annexed conditions of sale.

WITNESS my hand, this

day of

(Signatures.) (Seals.)

(109.)

#### AN AGREEMENT TO MAKE AN ASSIGNMENT OF A LEASE.

WHEREAS (*the lessor*) hath, by his deed indented, dated                      demised unto the said (*the lessee*) all that                      to have and to hold to him the said                      his (*reciting the lease*), as by the said deed indented more fully appears. Now the said                      for and in consideration of                      dollars, doth hereby for himself (*his heirs, &c.*), covenant,                      that he the said                      before the                      day of                      shall and will, at the costs and charges of (*the assignee*), his (*heirs, &c.*), by deed indented, assure, assign, and grant over to the said                      his (*heirs, &c.*), the said (*the premises*), and all his estate, right, title, and demand therein: To have and to hold to the said (*the assignee*), his (*heirs, &c.*), during the residue of the said term of years then to come, of, in, and to the same, by virtue of the said recited indenture, and under the rents, covenants, and agreements therein specified.

(Signatures.) (Seals.)

(110.)

#### AN AGREEMENT FOR MAKING A QUANTITY OF MANUFACTURED ARTICLES.

ARTICLES OF AGREEMENT, Between (*the buyer*), of the one part, and                      of the other part.

The said (*the manufacturer*), for the consideration hereinafter mentioned, doth covenant that he will, at his own charge, make for the said (*describe*

<sup>1</sup> It would be well to have the conditions of sale annexed, and refer to them by saying *hereunto annexed*.

*the articles to be made*), of the same quality of materials and goodness as, and in all other respects according to, a pattern agreed between the said parties, and deliver the same to the said at within months from the date hereof. And the said in consideration thereof, doth covenant to pay to the said at the rate of after months from the delivery of the said as aforesaid. And it is agreed, that if any of the said shall not be made agreeable to the said pattern, and for that reason shall be rejected by the said he the said shall take back such as shall so be refused, and deliver the said the like quantity of the goodness and make, according to the pattern aforesaid,

IN WITNESS

(Signatures.) (Seals.)

(111.)

#### AGREEMENT BETWEEN A TRADER AND A BOOK-KEEPER.

ARTICLES OF AGREEMENT, Between (*the trader*), of and (*the book-keeper*), of The said agrees that he will, during the term of years from the date hereof, dwell with the said and faithfully keep the books of accounts of the said and diligently serve the said in such other business as the said shall direct, and shall therein perform the reasonable directions of the said without disclosing the same, or any of his correspondence, or the secrets of his employment or business, to any person whatsoever; and shall not correspond with any person corresponding with the said nor use any traffic or dealing for himself, or any other person, without the consent of the said in writing. And the said further covenants, that he will, during the said term, keep true and perfect accounts for the said and will not embezzle, waste, or destroy any of the goods, moneys, or effects of the said or any of his correspondents; and also that he the said will, from time to time, during the said term, upon request, make and give unto the said his a just and perfect account in writing of all money which he the said shall receive and pay out, and of all goods and commodities which he shall, at any time during the said term, receive in or deliver out upon the account of the said or any of his correspondents, or by the order of the said And also that he the said his will pay to the said his all such sums of money as shall be due upon the foot of every such account. And also that he the said will not deliver forth upon credit any of the goods, merchandise, or moneys of the said or any of his correspondents, to any person or persons whatsoever, without the express consent of the said

And the said (*the trader*), for himself (*and his heirs, &c.*), covenants that he will pay to the said (*the book-keeper*), in consideration of the said ser-



vices, the yearly sum of                      in equal payments on the days following,  
 viz., on                      and will, during the said term, provide for the said  
    sufficient and suitable meat, drink, washing, and lodging.

IN WITNESS

(Signatures.)      (Seals.)

(112.)

AGREEMENT FOR DAMAGES IN LAYING OUT OR ALTERING A ROAD.

WHEREAS, A road was laid out on the                      day of                      A.D.  
 186    by                      and                      commissioners of highways of the  
 town of                      in the county of                      and State of  
 on the application of the requisite number of legal voters residing within  
 three miles of said road, as follows: Commencing

which road passes through the land of                      being known and described  
 as follows, viz.:

Now, therefore, it is hereby agreed between the said commissioners and  
 the said                      that the damages sustained by the said                      by  
 reason of the laying out and opening said road upon his land, hereinbefore  
 described, be liquidated and agreed upon at                      dollars.

IN WITNESS WHEREOF, The said commissioners and the said  
 have hereunto subscribed their names, this                      day of  
 A.D. 186

(Signatures.)      Commissioners of Highways.

(113.)

AN AGREEMENT BETWEEN A PERSON WHO IS RETIRING FROM THE  
 ACTIVE PART OF A BUSINESS, AND ANOTHER WHO IS TO CONDUCT  
 THE SAME FOR THEIR MUTUAL BENEFIT.

ARTICLES OF AGREEMENT, Made, entered into, and concluded upon,  
 this                      day of                      A.D.                      between                      of  
 of the one part, and                      of                      of the other part: Whereas  
 the said                      hath conducted and managed for some time past the  
 trade or business of the said                      and in consideration of the atten-  
 tion and assiduity of the said                      thereunto, the said  
 is willing to continue the said                      in the management thereof, under  
 the covenants, restrictions, and agreements hereinafter contained; and in  
 consequence thereof, an inventory and appraisement hath been made and  
 taken of the stock, and entered in two receipt-books, one of which is to  
 remain in the custody of each of them, the said parties to these presents,  
 and is subscribed by both of them, and the value of the said stock in the  
 whole appears to the amount of the sum of                      Now these presents  
 witness, that for and in consideration of the covenants and agreements

hereinafter contained on the part of the said \_\_\_\_\_ to be performed, the said \_\_\_\_\_ for himself, his executors and administrators, doth hereby covenant, promise, and agree, to and with the said \_\_\_\_\_ that it shall and may be lawful to and for the said \_\_\_\_\_ from time to time, during the term of eleven years, to be computed from the day of the date of these presents, if they the said \_\_\_\_\_ and \_\_\_\_\_ shall jointly so long live, to trade with the said stock, and to manage and improve the same, in such manner as to the said \_\_\_\_\_ under the direction of the said \_\_\_\_\_ shall seem meet; upon trust, nevertheless, and to the intent and purpose that the said \_\_\_\_\_ shall and do, by and out of the money which shall arise by sale of any part or parts of the said stock, buy such goods as shall be requisite to keep up and continue the present quality and value thereof, and by and out of the profits which shall arise from the trade and dealing, in the first place yearly and every year, pay the whole rent of the said house and shop, and pay and discharge all taxes which now are, or shall hereafter be, assessed or imposed on him the said \_\_\_\_\_ or the said \_\_\_\_\_ on account of the said house and trade; and in the next place, to pay to him the said \_\_\_\_\_ or his assigns, yearly and every year during the said term of eleven years, if they the said \_\_\_\_\_ and \_\_\_\_\_ shall so long live, one clear annuity or yearly sum of \_\_\_\_\_ by equal half-yearly payments, on the day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ without any deduction or abatement whatsoever, and subject thereto, to retain the residue and overplus of the profits which shall arise from his trade and dealing, to and for his own sole use and benefit, as a recompense and satisfaction for his care and trouble in the sale and management of the said stock. And the said \_\_\_\_\_ in consideration of the premises, and of the covenant and agreement hereinbefore on the part of the said \_\_\_\_\_ contained, doth for himself, his executors and administrators, covenant, declare, and agree that he the said \_\_\_\_\_ shall and will, from time to time, and at all times, for and during the said term of eleven years, if they the said \_\_\_\_\_ and \_\_\_\_\_ shall so long jointly live, diligently apply himself to the care and management of the said stock, trade, and business, according to his best skill, abilities, and discretion, and apply and dispose of the money which shall arise from the sale thereof, and all the profits of his trade and dealings, to answer and discharge the trusts hereby reposed in him, in such manner as hereinbefore is directed, declared, or expressed. And also shall and will write true and perfect entries, in proper books of accounts, of all such goods as shall be sold, and of all moneys which shall be paid and received by him, and permit the same, from time to time, to be inspected by him the said \_\_\_\_\_ or such other person or persons as he shall appoint. And further, that he the said \_\_\_\_\_ shall not nor will, at any time during the continuance of the said term of eleven years, buy or sell, or in any wise trade or deal in his own name, but in the name only of him the said \_\_\_\_\_ upon the trusts aforesaid; nor do any act whatsoever, whereby the said stock, or any part thereof, may be attached, or taken in execution. And also that at Christmas next, and so at every succeeding Christmas during the said term of eleven years or oftener, if thereto required by the said \_\_\_\_\_ he the said \_\_\_\_\_

shall and will take a full account in writing of the said stock, then remaining in the said trade, and of the profits thereof, and deliver the same to the said                      in order to manifest to him a true state thereof, and of his proceedings in the trade by him carried on therewith. And at the expiration, or other sooner determination, of the said term of eleven years, he the said                      his executors or administrators, shall and will deliver up to him the said                      his executors or administrators, the stock then remaining, for his or their own use and benefit, to the value of the sum of                      losses by bad debts, decay of goods, and other inevitable casualties excepted.

WITNESS our hands and seals, this                      day of                      in the year 18

(Signatures.) (Seals.)

In presence of

(114.)

#### A BRIEF BUILDING CONTRACT.

CONTRACT for building made this                      day of                      one thousand eight hundred and                      by and between                      of in the county of                      and                      of                      in the county of                      builder .

The said                      covenant and agrees to and with the said                      to make, erect, build, and finish, in a good, substantial, and workmanlike manner,                      upon                      situate                      said                      to be built agreeable to the draught, plans, explanations, or specifications, furnished or to be furnished to said                      by                      of good and substantial materials; and to be finished complete on or before the                      day of                      And said                      covenant and agrees to pay to said                      for the same                      dollars, as follows:

Security against mechanics' or other lien is to be furnished by said                      prior to                      payment by said

And for the performance of all and every the articles and agreements above mentioned, the said                      and                      do hereby bind themselves, their heirs, executors, and administrators, each to the other, in the penal sum of                      dollars, firmly by these presents.

IN WITNESS WHEREOF, We, the said                      and                      have hereunto set our hands, the day and year first above written.

(Signatures.) (Seals.)

Executed and delivered in presence of

Contracts for building are among those frequently made, and also among those which require the utmost care. A specification, stating and describing all the things which the parties desire and intend to have done, should always accompany the contract; and it may be difficult for persons not accustomed to the work to remember and specify, and properly describe, all the things they

propose to have in the building; but all these things should be accurately and precisely stated in the specification, as far as possible; for from omissions or errors of this kind, cases and questions are constantly arising.

---

## CHAPTER XIII.

### ASSIGNMENTS.

The word "assign" usually occurs in almost all forms of transfer and conveyance; but there are certain instruments to which the name of "assignment" is more particularly given. They are instruments by which other instruments or debts or obligations, as bonds, judgments, wages, and the like, are transferred. Sometimes they are written on the backs of, or elsewhere on the same paper with, the instruments to be transferred by the assignment. Some of these, as assignments of deeds of grant and conveyance, of mortgages, of leases, will be given in the chapters which treat of those topics. Here are given such forms as will enable one to make an assignment for any of the purposes for which assignments are usually made.

#### FORMS ANNEXED TO THIS CHAPTER.

- (115.) A brief form of an assignment, to be indorsed on a note, or any similar promise or agreement.
- (116.) A general assignment, with a power of attorney.
- (117.) An assignment of a bond.
- (118.) An assignment of a bond, with a power of attorney, and a covenant.
- (119.) An assignment of a judgment, in the form of an indenture.
- (120.) An assignment of wages, with a power of attorney.

#### (115.)

##### BRIEF FORM OF AN ASSIGNMENT, TO BE INDORSED ON A NOTE, OR ANY SIMILAR PROMISE OR AGREEMENT.

I HEREBY, for value received, assign and transfer the within written  
(or the above written) together with all my interest in, and all  
my rights under, the same, to (name of the assignee).

(Signature.)

(116.)

## A GENERAL ASSIGNMENT, WITH POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, That I \_\_\_\_\_ for value received, have sold, and by these presents do grant, assign, and convey unto (*name of the assignee and description of the things assigned*).

TO HAVE AND TO HOLD the same unto the said \_\_\_\_\_ executors, administrators, and assigns, for ever, to and for the use of \_\_\_\_\_ hereby constituting and appointing \_\_\_\_\_ my true and lawful attorney, irrevocable in my name, place, and stead, for the purposes aforesaid, to ask, demand, sue for, attach, levy, recover, and receive all such sum and sums of money which now are or may hereafter become due, owing, and payable for, or on account of, all or any of the accounts, dues, debts, and demands above assigned \_\_\_\_\_ giving and granting unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary, as fully, to all intents and purposes, as \_\_\_\_\_ might or could do, if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or \_\_\_\_\_ substitute shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the  
day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal.)

Executed and delivered in the presence of \_\_\_\_\_

(117.)

## ASSIGNMENT OF A BOND.

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_ in the hereunto annexed obligation named, for and in consideration of the sum of \_\_\_\_\_ lawful money of the United States of America, unto \_\_\_\_\_ well and truly paid by \_\_\_\_\_ at the time of the execution hereof, the receipt whereof \_\_\_\_\_ hereby acknowledge, have assigned, transferred, and set over, and by these presents do assign, transfer, and set over unto the said (*assignee*), his executors, administrators, and assigns, to and for his and their only proper use and behoof, the said hereunto annexed obligation, which is given and executed by \_\_\_\_\_ to \_\_\_\_\_ bearing date the \_\_\_\_\_ day of \_\_\_\_\_ Anno Domini 18 \_\_\_\_\_ to secure the payment of the sum of \_\_\_\_\_ with lawful interest therein expressed, and all moneys, both principal and interest, thereon due and payable, or hereafter to grow due and payable, with the warrant of attorney to the said obligation annexed; together with all rights, remedies, incidents, and appurtenances whatsoever thereunto belonging or in any wise appertaining, and all \_\_\_\_\_ right, title, and interest therein.

IN WITNESS WHEREOF, the said have hereunto set  
 hand and seal this day of Anno Domini  
 one thousand eight hundred and  
 (Signature.) (Seal.)  
 Sealed and delivered in the presence of us,

(118.)

# ASSIGNMENT OF A BOND, WITH POWER OF ATTORNEY, AND A COVENANT.

KNOW ALL MEN BY THESE PRESENTS, That of the first  
 part, for and in consideration of the sum of lawful money of  
 the United States of America, to in hand paid by  
 of the second part, at or before the en sealing and delivery of these presents,  
 the receipt whereof is hereby acknowledged, ha bargained, sold, and  
 assigned, and by these presents do bargain, sell, and assign, unto the  
 said party of the second part, executors, administrators, and assigns,  
 a certain written bond or obligation, and conditions thereof, bearing date  
 the day of one thousand eight hundred and  
 executed by  
 and all sum and sums of money due and to grow due thereon; and the  
 said party of the first part do covenant with the said party of the second  
 part, that there is now due on the said bond or obligation, according to  
 the conditions thereof, for principal and interest, the sum of  
 and do hereby authorize the said party of the second part, in  
 name to ask, demand, sue for, recover, receive, and enjoy the money due  
 and that may grow due thereon as aforesaid.

IN WITNESS WHEREOF, have hereunto set hand and  
 seal the day of one thousand eight hundred  
 and

(Signature.) (Seal.)

Sealed and delivered in the presence of

(119.)

# ASSIGNMENT OF A JUDGMENT, IN THE FORM OF AN INDENTURE.

THIS INDENTURE, Made the day of one thousand  
 eight hundred and between (assignor), of the first part, and  
 (assignee), of the second part.

WHEREAS, The said part of the first part one thousand  
 eight hundred and recovered by judgment in the  
 (name of court), against one the sum of

NOW THIS INDENTURE WITNESSETH, That the said part of the first  
 part, in consideration of to duly paid, ha sold, and  
 by these presents do assign, transfer, and set over unto the said part of  
 the second part, and assigns, the said judgment, and all sum  
 and sums of money that may be had or obtained by means thereof, or on

any proceedings to be had thereupon. And the said part of the first part do hereby constitute and appoint the said part of the second part, and assigns, true and lawful attorney, irrevocable, with power of substitution and revocation for the use, and at the proper costs and charges of the said part of the second part, to ask, demand, and receive, and to sue out executions, and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction or discharge the same. And attorneys one or more under for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that said attorney or substitute shall lawfully do in the premises. And the said part of the first part do covenant that there is now due on the said judgment the sum of and that will not collect or receive the same, or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings therein, the said part of the second part saving the said part of the first part harmless of and from any costs in the premises.

IN TESTIMONY WHEREOF, The part of the first part ha hereunto set hand and seal the day and year first above written.

(Signatures.) (Seals.)

Sealed and delivered in the presence of

(120.)

#### ASSIGNMENT OF WAGES, WITH POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, That I of in the county of in consideration of to me paid by of the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said all claims and demands which I now have, and all which, at any time between the date hereof and the day of next, I may and shall have, against for all sums of money due, and for all sums of money and demand which, at any time between the date hereof and the said day of next, may and shall become due to me, for services as To have and to hold the same to the said his executors, administrators, and assigns, for ever.

And I do hereby constitute and appoint the said and his assigns to be my attorney irrevocable in the premises, to do and perform all acts, matters, and things touching the premises, in the like manner to all intents and purposes as I could if personally present.

IN WITNESS WHEREOF, I have set my hand and seal, this day of 18

(Signature.) (Seal.)

Signed, sealed, and delivered in presence of

## CHAPTER XIV.

## BONDS.

A bargain where both parties make promises, and come under obligations, each to the other, may be made without seal, and would then be called an agreement. If made under seal, it would generally be in the form of, and bear the name of, an indenture. If a promise by one only is made in writing, without a seal, it is a simple promise; but if it be made with a seal, then it would generally be in the form of, and bear the name of, a bond.

The essentials of a bond, beside the seal, are only that one party should acknowledge himself "held, bound, and obliged" unto another party, to pay to him a sum of money; and neither of the words "held" or "bound" or "obliged" are strictly necessary, although usual and proper: other words of the same meaning will have the same effect. In such a bond, the party bound is called the *obligor*, and the party to whom he is bound is called the *obligee*. The sum for which the obligor is bound is called the penal sum, or the *penalty*. Such a bond is simply an obligation to pay so much money. But a bond is not often given only for this purpose. It is usually intended to be, in fact, an obligation to do something else, on the *penalty* of paying so much money if it be not done. This something else may be any thing whatever which the obligor may contract to do. All this is contained in an addition, which is written on the same paper immediately after the bond itself; that is, after the words of obligation. And this is called the "condition" of the bond. It begins with saying, "This bond is on the condition following;" or, "The condition of this bond (or obligation) is such (or as follows)," and then recites the things which the obligor has undertaken to do; and then adds, that if all these things are fully done and performed, then the bond shall be void and of no effect, and otherwise shall remain in full force.

The meaning and effect of all this is, that if the obligor fails, in any respect, to do what the condition recites, then he is bound to pay the money he acknowledges himself, in the bond, bound to pay. But now the law comes in to mitigate the severity of this contract. And whatever be the sum which the obligor acknowledges himself, in the bond, bound to pay, he is held by the courts to pay to the obligee only that amount which will be a complete indemnification



to him for the damage he has sustained by the failure of the obligor to do what the condition recites.

For example; suppose A B makes a bond to C D, acknowledging himself bound to C D in the sum of ten thousand dollars. The condition recites that one E F has been hired by C D as his clerk, and that A B guarantees the good conduct of E F; and if E F does all his duty honestly and faithfully, then the bond is void, and otherwise remains in full force. Then suppose E F cheats C D out of some money. A B is sued on the bond; C D cannot recover from him, in any event, *more* than the ten thousand dollars; and he will in fact recover from him only so much of this as will make good to C D all the loss he has sustained by E F's misconduct. As the obligee can recover from the obligor only actual compensation for what he loses, it is usual, in practice, to make the penal sum in the bond large enough to cover all the loss that can happen, or as much as the obligor is willing to be responsible for.

There need be no "consideration" alleged or asserted in the bond, or proved, because, in the language of the law, the seal is (or implies) a consideration.

The following forms are those of bonds frequently given; and it will be easy to frame from some one of them any bond that is wanted for other purposes.

#### FORMS ANNEXED TO THIS CHAPTER.

- (121.) A simple bond, without condition.
- (122.) A bond for payment of money, with a condition to that effect, with a power of attorney to confess judgment annexed.
- (123.) A bond for conveyance of a parcel of land.
- (124.) A bond for a deed of land, with acknowledgment before a notary public.
- (125.) A bond in another form, for conveyance of land, with acknowledgment.
- (126.) A bond to a corporation for payment of money due for contribution to capital stock, with a power of attorney to confess judgment.

#### (121.)

##### A SIMPLE BOND, WITHOUT CONDITION.

KNOW ALL MEN BY THESE PRESENTS, That I (*the obligor*), am held and firmly bound unto (*the obligee*), in the sum of                      lawful money of the United States of America, to be paid to the said                      or his cer-

tain attorney, or assigns: to which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal. Dated the            day of            in the year of our Lord one thousand eight hundred and

IN TESTIMONY WHEREOF, I            have set my hand and seal to this instrument, on the            day of            in the year of our Lord eighteen hundred and

(Signature.) (Seal.)

(Witnesses).

Executed and delivered in presence of

(122.)

BOND FOR PAYMENT OF MONEY, WITH A CONDITION TO THAT EFFECT, WITH POWER OF ATTORNEY TO CONFESS JUDGMENT ANNEXED.

KNOW ALL MEN BY THESE PRESENTS, That            held and firmly bound unto            in the sum of            lawful money of the United States of America, to be paid to the said            or his certain attorney, executors, administrators, or assigns: to which payment well and truly to be made,            heirs, executors, and administrators, firmly by these presents. Sealed with            seal . Dated the            day of            in the year of our Lord one thousand eight hundred and

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden            heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named            certain attorney, executors, administrators, or assigns, the just sum of            dollars, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue.

(Signature.) (Seal.)

Sealed and delivered in the presence of

To            Esq., Attorney of the Court of Common Pleas, at            in the county of            in the State of            or to any other attorney of the said court, or of any other court, there or elsewhere.

WHEREAS (*the obligor*), in and by a certain obligation, bearing even date herewith, do stand bound unto (*the obligee*), in the sum of            lawful money of the United States of America, conditioned for the payment of

THESE are to desire and authorize you, or any of you, to appear for            heirs, executors, or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought or to be brought against me, or my heirs, executors, or administrators, at the suit of the said (*the obligee*), executors, administrators, or assigns, on the said obligation, as of any term or time past, present, or any other subsequent

term or time there or elsewhere to be held, and confess judgment thereupon against me, or my heirs, executors, or administrators, for the sum of                    lawful money of the United States of America, debt, besides costs of suit, in such manner as to you shall seem meet: and for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby for myself, and for my heirs, executors, and administrators, remise, release, and for ever quitclaim unto the said (*the obligee*), or his certain attorney, executors, administrators, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

IN WITNESS WHEREOF,                    have hereunto set                    hand  
and seal , the                    day of                    in the year of our Lord one  
thousand eight hundred and

(Signature.) (Seal.)

Sealed and delivered in the presence of

(123.)

#### BOND FOR CONVEYANCE OF A PARCEL OF LAND.

KNOW ALL MEN BY THESE PRESENTS, That we,                    as principals,  
and                    as sureties, are holden and stand firmly bound unto  
in the sum of                    dollars, to the payment of which to the said  
or                    executors, administrators, or assigns, we hereby jointly and  
severally bind ourselves, our heirs, executors, and administrators.

THE CONDITION of this obligation is such, that whereas the said obligors have agreed to sell and convey unto the said obligee a certain parcel of real estate, situated                    and bounded as follows, namely :

The same to be conveyed by a good and sufficient (*warranty or other*) deed of the said obligors, conveying a good and clear title to the same, free from all incumbrances.

And whereas, for such deed and conveyance it is agreed that the said obligee shall pay the sum of                    dollars, of which  
dollars are to be paid in cash upon the delivery of said deed, and the remainder by the                    note of the said obligee, bearing interest at  
per cent per annum, payable semi-annually, and secured by a  
mortgage in the usual form upon the said premises, such note  
to be (*describe the note*).

Now, therefore, if the said obligors shall upon tender by the said obligee of the aforesaid cash, note , and mortgage at any time within  
from this date, deliver unto the said obligee a good and sufficient deed as aforesaid, then this obligation shall be void, otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We hereunto set our hands and seals, this  
day of                    A.D. 18

Signed and sealed in presence of

(124.)

BOND FOR A DEED OF LAND, WITH ACKNOWLEDGMENT BEFORE  
NOTARY PUBLIC.

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_ of the county  
of \_\_\_\_\_ and State of \_\_\_\_\_ held and firmly bound to  
of \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, to be paid to said  
his executors, administrators, or assigns, to the payment whereof  
bind \_\_\_\_\_ sel \_\_\_\_\_ heirs, executors, and administrators, firmly by  
these presents. Sealed with \_\_\_\_\_ seal, and dated the \_\_\_\_\_ day o  
A.D. 186 \_\_\_\_\_

THE CONDITION OF THIS OBLIGATION IS, That if \_\_\_\_\_ the said  
upon payment of \_\_\_\_\_ dollars, and interest, by said  
within \_\_\_\_\_ years from this date, agreeably to  
note of even date herewith, shall convey to said \_\_\_\_\_ and  
heirs, for ever, a certain tract of land, situated in the county  
of \_\_\_\_\_ and State of \_\_\_\_\_ to wit:

by a \_\_\_\_\_ deed in common form duly executed and acknowledged  
and in the mean time shall permit said \_\_\_\_\_ to occupy and improve  
said premises for \_\_\_\_\_ own use, then this obligation shall be void,  
otherwise to remain in full force and effect.

IN TESTIMONY WHEREOF, \_\_\_\_\_ have hereunto set  
hand and seal the day and year first above written.

(Signature.) (Seal.)

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

BE IT REMEMBERED, That on this \_\_\_\_\_ day of \_\_\_\_\_ eigh-  
teen hundred and \_\_\_\_\_ before me, the undersigned, notary public in  
and for said county and State, duly commissioned and qualified, came  
who \_\_\_\_\_ to be the same person whose name  
subscribed to the foregoing instrument of writing, as party thereto, and  
acknowledged the same to be \_\_\_\_\_ act and deed for the  
purpose therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
official seal, at my office in the city of \_\_\_\_\_ the day and year last  
aforesaid.

Notary Public.

(125.)

BOND IN ANOTHER FORM, FOR CONVEYANCE OF LAND, WITH  
ACKNOWLEDGMENT.

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_ of  
in the county of \_\_\_\_\_ and State of \_\_\_\_\_ held and firmly bound  
unto \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_ and State of  
\_\_\_\_\_ in the penal sum of \_\_\_\_\_ dollars, for the payment of

which sum, well and truly to be made to                      heirs, executors, and administrators, I bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal, and dated this                  day of                  A.D. 18  
THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas  
the said                  this day has given the said                  promissory note  
of even date herewith, promising to pay to the said

Now, if, on payment of the said note being made on or before the time shall become due, and all taxes on the land hereinafter described having been paid by the said and no right of pre-emption having been established or claimed on the said land, or any part thereof, the said or his legal representatives shall, whenever therunto afterwards requested, execute and deliver to the said or legal representatives, a good and sufficient deed, conveying to the (here describe the land), free and clear of all incumbrance then this obligation to be null and void, otherwise of full force and effect; it being distinctly understood and agreed by and between the parties hereto that the time of payment herein above fixed material and of the essence of this contract, and that in case of failure therein the intervention of equity is for ever barred.

(Signatures.) (Seals.)

Signed, sealed, and delivered in presence of

STATE OF }  
COUNTY OF } ss.

I, \_\_\_\_\_ in and for the said county, in the State aforesaid, do hereby certify that \_\_\_\_\_ personally known to me as the same person whose name \_\_\_\_\_ subscribed to the above bond for deed, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said bond as \_\_\_\_\_ free and voluntary act, and for the use and purpose therein set forth.

GIVEN under my hand and seal, this day of  
A.D. 18

*Notary Public.*

(126.)

**BOND TO CORPORATION FOR PAYMENT OF MONEY DUE FOR CONTRI-  
BUTION TO CAPITAL STOCK, WITH POWER OF ATTORNEY TO CON-  
FESS JUDGMENT.**

KNOW ALL MEN BY THESE PRESENTS, That held and firmly  
bound unto *(name of the corporation)* in the sum of lawful money  
of the United States of America, to be paid to aforesaid, their  
certain attorney, successors, or assigns. To which payment well and truly  
to be made, firmly by these presents. Sealed with  
seal . Dated the day of in the year of our Lord  
one thousand eight hundred and

THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden                      heirs, executors, and administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above-named their certain attorney, successors, or assigns, the just sum of                      such as abovesaid, at any time within                      years from the date hereof, together with lawful interest for the same, in like money, payable monthly, on the                      of each and every month hereafter, and shall also well and truly pay, or cause to be paid, unto                      aforesaid, their successors or assigns, the sum of                      dollars, on the said                      of each and every month hereafter, as and for the monthly contribution on                      share of the capital stock of                      aforesaid, now owned by the said                      without any fraud or further delay; provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of the said principal money when due, or of the said interest, or the monthly contribution on said stock, for the space of                      after any payment thereof shall fall due,                      then and in such case the whole principal debt aforesaid shall, at the option of                      aforesaid, their successors and assigns, immediately thereupon become due, payable, and recoverable, and payment of said principal sum and all interest thereon, as well as any contribution on said                      share of stock, then due, may be enforced and recovered at once, any thing hereinbefore contained to the contrary thereof notwithstanding. And the said                      for heirs, executors, administrators, and assigns, hereby expressly waive and relinquish unto                      aforesaid, their successors and assigns, all benefit that may accrue to                      by virtue of any and every law, made or to be made, to exempt the premises described in the indenture of mortgage herewith given, or of any other premises whatever, from levy and sale under execution, or any part of the proceeds arising from the sale thereof, from the payment of the moneys hereby secured, or any part thereof, then the above obligation to be void, or else to be and remain in full force and virtue.

(Signatures.) (Seals.)

Executed and delivered in presence of

To                      Esquire, Attorney of the Court of Common Pleas at                      in  
the county of                      in the State of                      or to any other attorney, or  
to the prothonotary of the said court, or of any other court, there or elsewhere.

WHEREAS,                      in and by a certain obligation, bearing even date herewith, do stand bound unto                      in the sum of                      lawful money of the United States of America, conditioned for the payment of the just sum of                      such as abovesaid, at any time within                      years from the date thereof, together with lawful interest for the same in like money, payable monthly, on the                      of each and every month thereafter, and should also well and truly pay or cause to be paid unto                      aforesaid, their successors or assigns, the sum of                      dollars, on the                      of each and every month there-

after, as and for the monthly contribution on share of the capital stock of aforesaid, now owned by the said without any fraud or further delay ; provided, however, and it is thereby expressly agreed, that if at any time default should be made in the payment of the said principal money when due, or of the said interest, or the monthly contribution on said stock, for the space of after any payment thereof should fall due, then and in such case the whole principal debt aforesaid should, at the option of aforesaid, their successors and assigns, immediately thereupon become due, payable, and recoverable, and payment of said principal sum, and all interest thereon, as well as any contribution on said share of stock then due, might be enforced and recovered at once, any thing thereinbefore contained to the contrary thereof notwithstanding. And the said heirs, executors, administrators, and assigns, thereby expressly waive and relinquish unto aforesaid, their successors and assigns, all benefit that might accrue to by virtue of any and every law made or to be made to exempt the premises described in the indenture of mortgage therewith given, or of any other premises whatever, from levy and sale under execution,\* or any part of the proceeds arising from the sale thereof, from the payment of the moneys thereby secured, or any part thereof. These are to desire and authorize you, or any of you, to appear for heirs, executors, or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought or to be brought, against heirs, executors, or administrators, at the suit of aforesaid, their successors or assigns, on the said obligation, as of any term or time past, present, or any other subsequent term or time; there or elsewhere to be held, and confess or enter judgment thereupon against heirs, executors, or administrators, for the sum of lawful money of the United States of America, debt, besides costs of suit, in such manner as to you shall seem meet; and for your or any of your so doing this shall be your sufficient warrant. And heirs, executors, and administrators, remise, release, and for ever quitclaim unto aforesaid, their certain attorney, successors, and assigns, all and all manner of error and errors, misprisions, misentries, defects, and imperfections whatever, in the entering of the said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

IN WITNESS WHEREOF, have hereunto set  
hand and seal the day of in the year of our Lord  
one thousand eight hundred and

(Signatures.) (Seals.)

Sealed and delivered in presence of

## CHAPTER XV. GUARANTY.

### SECTION I.

#### OF THE RIGHTS AND DUTIES OF A GUARANTOR.

A guarantor is one who is bound to another for the fulfilment of a promise, or of an engagement, made by a third party. This kind of contract is very common. Generally, it is not negotiable; that is, not transferable so as to be enforced by the transferee as if it had been given to him by the guarantor. No special form or words are necessary to the contract of guaranty; and if the word "guarantee" be used, and the whole instrument contains all the characteristics of a note of hand, payable to order or bearer, then it is negotiable. Thus, in a case in New York, the instrument was as follows: "For and in consideration of thirty-one dollars and fifty cents received of B. F. Spencer, I hereby guarantee the payment and collection of the within note to him or *bearer*. Auburn, Sept. 25, 1837. (Signed) Thomas Burns." And it was held negotiable. What *negotiable* means will be more fully explained in the chapter on Notes of Hand and Bills of Exchange.

The guaranty may be enforced, although the original debt cannot; as, for example, the guaranty of the promise of a wife or an infant; and sometimes the guaranty of a debt is requested, and given, for the very reason that the debt is not enforceable at law. But, generally, the liability of the principal measures and limits the liability of the guarantor. And if the creditor agrees with the principal debtor that the debt shall be reduced or lessened in a certain proportion, the obligation of the guarantor is reduced by law in an equal proportion.

A contract of guaranty is construed somewhat strictly. Thus, a guaranty of the notes of one does not extend to notes which he gives jointly with another.

A guarantor who pays the debt of the principal may demand from his creditor the securities he holds, although not an assignment of the debt itself or of the note or bond which declares the debt, for that is paid and discharged. And the creditor should not be permitted to resort to the guarantor, until he has collected as much as he can from these securities, or offers to transfer them to the guarantor.

Unless the guaranty is by a sealed instrument, there must be a consideration to support it. If the original debt or obligation rest upon a good consideration, this will support the promise of guar-



anty, if this promise was made at the same time with or prior to the original debt. But if that debt or obligation be first incurred and completed before the guaranty is given, there must be a new consideration for the promise to guarantee that debt, or the guaranty is void. But the consideration need not pass from him who receives the guaranty to him who gives it. Any benefit to him for whom the guaranty is given, or any injury to him who receives it, is a sufficient consideration if the guaranty be given because of it.

**A guaranty is not binding unless it is accepted, and unless the guarantor has knowledge of this.** But the law presumes this acceptance in general, when the giving of the guaranty and any action on the faith of it by the party to whom it is given are simultaneous. In New York, wherever the guaranty is absolute, notice of its acceptance is unnecessary, unless expressly or impliedly required by the offer of guaranty. But, generally, an offer to guarantee a future operation, especially if by letter, does not bind the offerer, unless he has such notice of the acceptance of his offer as would give him a reasonable opportunity of making himself safe.

**A guarantor is often called a surety, and is generally so called in cases where the good conduct of a third person is guaranteed.** The words "surety" and "guarantor" do not mean precisely the same thing, but they are often used as if they did.

**If the liability of the principal be materially varied by the act of the party guaranteed, without the consent of the guarantor, the guarantor or surety is discharged.** Many interesting cases have arisen which involve this question. Thus, where a bond was given conditioned for the faithful performance of the duties of the office of deputy-collector of direct taxes for eight certain townships, and the instrument of appointment, referred to in the bond, was afterwards altered so as to extend to another township, without the consent of the surety, the Supreme Court of the United States held that the surety was discharged from his responsibility for moneys collected by his principal after the alteration. Again, in an English case, the facts were, that, in a bond by sureties for the careful attention to business and the faithful discharge of the duties of an agent of a bank, it was provided "that he should have no other business of any kind, nor be connected in any shape with any trade, manufacture, or mercantile copartnery, nor be agent of any individual or copartnery in any manner or way whatsoever, nor be security for any individual or copartnery in any manner or way whatsoever." The bank subsequently, without the knowledge of the sureties, increased the salary of the agent, he undertaking to bear one-fourth part of all losses which might be incurred by his discounts. It was held that this was such an alteration of the contract, and of the

liability of the agent, that the sureties were discharged, notwithstanding that the loss arose not from discounts, but from improper conduct of the agent.

**The guarantor is also discharged if the liability or obligation be renewed or extended by law.** As if a bank, incorporated for twenty years, be renewed for ten more, and the officers and business of the bank go on without change: the original sureties of the cashier are not held beyond the first term. So a guaranty to a partnership is extinguished by a change among the members, although neither the name nor the business of the firm be changed. But a guaranty, by express agreement, may be made to continue over most changes of this kind.

**A specific guaranty, for one transaction which is not yet exhausted, is not revocable.** If it be a continuing or a general guaranty, it is revocable, unless an express agreement, founded on consideration, makes it otherwise.

**A creditor may give his debtor some accommodation or indulgence, without thereby discharging his guarantor.** It would seem just, however, that he should not be permitted to give him any indulgence which would materially prejudice the guarantor. Generally, a guarantor may always pay a debt, and so acquire at once the right of proceeding against the party whose debt he has paid. On this ground, it has been held that where a surety requested the creditor to proceed against the principal debtor, and the creditor refused to do this, and afterwards the debtor became insolvent and the surety was without indemnity, still, the surety (or guarantor) was not discharged, because he might have paid the debt, and then sued the party whose debt he paid. In New York, it seems to be the law, that, if the surety requests the creditor to proceed against the principal debtor, and he refuses, and the principal debtor afterwards becomes insolvent, the surety will be discharged. This seems to be the better rule. If, by gross negligence, the creditor has lost his debt, and has deprived the surety of security or indemnity, the surety must be discharged, unless he was equally negligent. If a creditor gives time to his debtor, by a binding agreement which will prevent a suit in the mean time, this undoubtedly discharges the guarantor (unless the surety consents to the delay), because it deprives him of his power of acquiring a right of proceeding against the debtor, by paying the debt; for the debtor cannot during that time be sued.

**If there be a failure on the part of the principal, and the guarantor is looked to, he should have reasonable notice of this.** And, generally, any notice would be reasonable which would be sufficient in fact to prevent his suffering from the delay. And if there be no

notice, and the guarantor has been unharmed by the want of notice, he is not discharged.

If a guaranty purport to be official, that is, if it be made by one who claims to hold a certain office, and to give the promise of guaranty only as such officer, and not personally, the general rule is, that he is not liable personally, provided he actually held that office and had a right to give the guaranty officially. But he would still be held personally if the promise made or the relations of the parties indicated that credit was given personally to the party promising, and not merely to him in his official capacity; or if he had no right to give the promise in his official capacity.

A guaranty was given for the price of a cargo of iron; and the buyer bargained with the seller to pay him more than the fair price, the excess to go towards an old debt. The guaranty was held to be altogether void, because fraudulent, and could not be enforced even for the fair price.

#### FORMS ANNEXED TO THIS CHAPTER.

- (127.) A guaranty to be indorsed on a note.
- (128.) A guaranty of a note, on a separate paper.
- (129.) A guaranty in another way.
- (130.) A letter of guaranty.
- (131.) A guaranty with collaterals, authorizing sales.
- (132.) A guaranty with collaterals, promising additional security or authorizing sale.

#### (127.)

##### GUARANTY TO BE INDORSED ON A NOTE.

For value received, I guarantee the due payment of the within written note.

(Date.)

(Signature.)

#### (128.)

##### GUARANTY OF A NOTE ON SEPARATE PAPER.

For value received, I guarantee the due payment of a promissory note,  
dated                      whereby                      promises to pay to

dollars in                      months.

(Date.)

(Signature.)

#### (129.)

##### GUARANTY IN ANOTHER WAY.

For value received, I guarantee that the within (*note or bill, or that such a note or bill, describing it*), will be collected and paid, if demanded in due course of law.

(Date.)

(Signature.)

(130.)

## LETTER OF GUARANTY.

SIR,—If you will sell to Mr. \_\_\_\_\_ of \_\_\_\_\_ the goods he wishes to buy (*or the goods may be described*), to the amount of (*this may be omitted if the guaranty is intended to be of any amount*), within \_\_\_\_\_ year (*or days or months, or the time may be omitted if it is not intended to limit it*), from the date hereof, I, for value received, hereby promise and guarantee that the price thereof shall be duly paid. (*This letter should also state on what terms the goods should be sold, as to credit, delivery, &c., unless it is intended to leave all this to the buyer and seller.*)

(Date.)

(Signature.)

When goods or stocks or other securities are given as collateral security for borrowed money or any other debt, an instrument is sometimes given, the intention of which is to guarantee that the collaterals should be and remain sufficient to secure the indebtedness. It may be in one of the following forms, as the bargain requires. These are sometimes called "margin guaranties."

(131.)

## GUARANTY WITH COLLATERALS, AUTHORIZING SALE.

WHEREAS, I (*or we*) have deposited with \_\_\_\_\_ as collateral security for payment at maturity of the following (*here describe the debt guaranteed*).

NOW THIS WITNESSETH, That in the event of the non-payment at maturity of any or all of these \_\_\_\_\_ hereby authorize \_\_\_\_\_ or \_\_\_\_\_ assigns, to sell the above (*the collaterals*), at public or private sale, or at the brokers' board, without notice to \_\_\_\_\_ and apply proceeds to payment of said \_\_\_\_\_ and all necessary expenses, holding \_\_\_\_\_ responsible for any deficiency.

IN WITNESS WHEREOF, \_\_\_\_\_ have hereunto set \_\_\_\_\_ hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

(Signature.)

(Witness.)

(132.)

## GUARANTY WITH COLLATERALS, PROMISING ADDITIONAL SECURITY OR AUTHORIZING SALE.

HAVING BORROWED THIS DAY OF (*the sum borrowed*), on the following collaterals (*here describe the collaterals*).

I HEREBY AGREE, in case the market price of the said stock should fall at any time during the continuance of the loan to an amount insufficient



£10 sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

The second and fifth clauses of the fourth section, and the whole of the seventeenth, relate to our present subject. The second clause prevents a merely *oral* guaranty from being enforced at law; but if money be paid on one, it cannot be recovered back.

#### A PROMISE TO PAY THE DEBT OF ANOTHER.

A promise to pay the debt of another is said to be a collateral promise, and not an *original* promise.

It is very often difficult to say whether the promise of one to pay for goods delivered to another is an *original* promise: as to pay for one's own goods, and then it need not be in writing; or a promise to pay the debt, or guaranty the promise of him to whom the goods are delivered, and then it must be in writing.

The question may always be said to be: To whom did the seller give, and was authorized to give, credit? This question the jury will decide, upon consideration of all the facts, under the direction of the court. If a seller sues one to whom he did not deliver the goods, on the ground that this other promised to pay for them, then the question is, Did this other promise to pay for them as for his own goods? for then the promise need not be in writing. Or did he promise to pay for them as for the goods of the party receiving them? and then it is a promise to pay the debt of another, and must be in writing. If, on examination of the books of the seller, it appears that he charged the goods to the party who received them, it will be difficult, if not impossible, for the seller to maintain that he sold them to the other party. But if he charged them to this other, such an entry would be good evidence, and, if confirmed by circumstances, strong evidence that this party was the purchaser. But it cannot be conclusive; for the party not receiving the goods may always prove, if he can, that he was not the buyer, and that he promised only as surety for the party who was the buyer; and, consequently, that his promise cannot be enforced if not in writing. And, in general, in determining this question, the court will always look to the actual character of the transaction, and the intention of the parties.

The courts, both in England and America, have often endeavored to illustrate this question. Thus, in an early English case, the

court said: "If two come to a shop, and one buys, and the other, to gain him credit, promises the seller, 'If he does not pay you, I will,' this is a *collateral* undertaking, and void, without writing, by the statute of frauds. But if he says, 'Let him have the goods, I will be your paymaster,' this is an undertaking as for himself, and he shall be intended to be the very buyer, and the other to act but as his servant." So, in a case in Maryland, the court said: "If B gives credit to C for goods sold and delivered to him, on the promise of A to 'see him paid,' or 'to pay him for them if C should not,' in that case it is the immediate debt of C, for which an action will lie against him, and the promise of A is a collateral undertaking to pay that debt [and must be in writing], he being only liable as a surety. But where the party undertaken for is under no liability himself, the promise is an original undertaking of the party promising, and binding upon him without being in writing. Thus, if B furnishes goods to C, on the express promise of A to pay for them, as if A says to him, 'Let C have goods to such an amount, and I will pay you,' and the credit is given to A, in that case, C being under no liability, C cannot be sued for the price; there is nothing to which the promise of A can be collateral; but A being the immediate debtor, it is his original undertaking, and not a promise to answer 'for the debt of another,' and therefore need not be in writing."

Whenever the main purpose and object of the promisor is not to answer for another, but to subserve some purpose of his own, his promise is not within the requirement of the statute, and can therefore be enforced although not in writing, and although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing the liability of another. If an old debt is extinguished by a new promise, this promise is considered as an original one, and not within the requirement of the statute.

If there be an oral promise to pay the debt of another, and also to do some other thing, this last can be enforced at law, if this other thing, and so much of the promise as relates to it, can be severed from the debt of the other and the promise relating to that debt; for although *that* promise must be in writing, the other may be oral.

#### AN AGREEMENT NOT TO BE PERFORMED WITHIN A YEAR.

Under the fifth clause in the fourth section it is held that an agreement which *may* be performed within the year is not affected by the statute, as the words, "that is not to be performed within

one year," do not apply to an agreement which, when made, was, and by the parties was understood to be, fairly capable of complete execution within a year, without the intervention of extraordinary circumstances, — although in point of fact its execution was extended much beyond the year. So where one agreed orally, for one guinea, to give another a number of guineas on the day of his marriage, it was held that this promise was not within the statute, that is, not one which the statute required to be in writing, because he might be married within a year, and the promisor was therefore bound by it. So, where one agreed orally never to go into the staging business in a certain place; as this contract could last only while the promisor lived, and he might die within a year, he was held to be bound by it.

• THE FORM AND SUBJECT-MATTER OF THE AGREEMENT.

The "agreement" must be in writing; but generally, in this country, the writing need not be all on one piece of paper. For it is sufficient if on several pieces, as in several letters, which, however, relate to one and the same business, and may fairly be read together as the statement of one transaction. But it must appear from the papers that they are so connected.

The "signature" may be in any part of the paper, — the beginning, middle, or end, — except in those of our States in which the statute has the word "subscribed" instead of "signed;" in which case it should be in the usual place at the bottom. If the name and the agreement be *printed*, it is sufficient; hence, a printed shop-bill, with the name of the seller as usual at the beginning, if delivered to the buyer, is generally sufficient to charge the seller in an action for refusing to deliver the goods.

Shares in railroad companies, in manufacturing companies, and, generally, in all corporations and joint-stock companies, are "goods, wares, or merchandises," within the meaning of the statute in this country, and an agreement for their purchase and sale must therefore be in writing.

It may be further remarked, that the operation of the statute has been always limited to such contracts as have not been executed in any substantial part, and therefore remain wholly executory. For if they have been executed substantially in good part, they are binding, although only oral.

In Massachusetts, the statute of frauds also provides (third section) that no action shall be brought to charge any person upon, or by reason of, any representation or assurance made concerning the character, conduct, credit, ability, trade, or dealings of any other



person, unless it be made in writing, and signed by the party to be charged. And there are provisions substantially similar to this in the statutes of Maine and Vermont.

Instead of the "£10" in the seventeenth section of the English statute, the sum mentioned in the statutes of frauds of the different States is generally from thirty to fifty dollars.

---

## CHAPTER XVI.

### PAYMENT AND TENDER.

#### SECTION I.

##### HOW PAYMENT MAY BE MADE.

The obligations which arise out of most mercantile contracts are to be satisfied by payment of money. The parties may always agree to any specific manner of payment, and then that becomes obligatory on the creditor as well as the debtor. As, by deducting the amount to be paid from a debt due to the debtor, either from the creditor or from any one else. Or the amount may be made, by agreement, payable by a bill or note. If the debt is to be paid by a bill or note, it must be such a one as is agreed upon, and this must be tendered by the debtor. But the word "note" or "bill" does not necessarily mean an "approved note" or "bill;" and if this phrase be itself used, it means only a note or bill to which there is no reasonable objection; that is, one which ought to be approved.

In the absence of any especial agreement, the only payment known to the law is by cash, which the debtor must pay when it is due, or tender to the creditor.

The tender should, properly, be in cash, or in bills made a legal tender by law, and must be so if that is required; but a tender in good and current bank-bills is sufficient, unless it be objected to because they are not money.

Generally, if the tender be refused for any express and specific reason, the creditor cannot afterwards take advantage of any *informality* to which he did not object at the time of the tender.

The tender may be of a larger sum than is due. But a tender of a larger sum, if made with a requirement of change or of the balance, is not good. Nor must it be accompanied with a demand or condition that any instrument or document shall be delivered;

nor that the sum tendered shall be received as all that is due; nor that a receipt in full shall be given. But a simple receipt for so much money paid may be demanded. We have already seen that, if a receipt be given, it is only strong evidence of payment, but not conclusive. And even if it be "in full of all demands," it is still open to explanation or denial by evidence.

**A lawful tender, and payment of the money into court, is a good defence to an action for the debt.** But the creditor may break down this defence by proving that, subsequently to the tender, he demanded the money of the debtor, and the debtor refused to give it. If a debtor tenders money to pay his debt, he must be always ready to pay that money if it be asked from him.

**If the buyer or debtor give, and the seller or creditor receive, a negotiable note or bill for the sum due, this is not anywhere absolute and conclusive payment.** In Maine and in Massachusetts the law presumes that such note or bill is payment of the debt unless a contrary intention is shown. In nearly all the States of this Union but those two, and in the Supreme Court of the United States, it is not payment, unless the intention of the parties that it should be so is shown. In New York, it has been held that the debtor's own promissory note is not payment, even if it be intended or expressly agreed that it should be.

**If a creditor, who receives from his debtor any bill or note, negotiates or sells it for value to a third party, without making himself liable, the bill or note was payment, although it be dishonored, because it has been good to the debtor, and he has received the avails of it; and if the law did not hold that the bill had paid the debt, he could sue the original debt, and then he would have the value of the bill or payment twice.** Not so, however, if he negotiates it in such a way that he is himself liable upon it; for if he pays it, he loses what he sold it for, unless he can recover his debt from his debtor.

## SECTION II.

### APPROPRIATION OF PAYMENT.

**If one who owes several debts to his creditor makes to him a general payment, it may be an important question to which of those debts this payment shall be appropriated: for some of them may be secured, and others not; or some of them may carry interest, and others not; or some of them be barred by the statute of limitations, and others not.**

**There is no doubt that the payor may appropriate his payment, at the time of the payment, at his own pleasure. And if he does**

not exercise this right, the receiver may, at the time of payment, make the appropriation. But if neither party does this *at that time*, and at a future period the question comes up as to which party may then make the appropriation, or, rather, how the law will then appropriate the payment, it is then the better and prevailing rule that, if the court can ascertain, either from the words used, or from the circumstances of the case, or from any usage, what was the intention and understanding of the parties at the time of the payment, that intention will be carried into effect. And if this cannot be ascertained, then the court will direct such appropriation of the payment as will best protect the rights and interests of both parties, and do justice between them. And one reason for this conclusion would be, that the law would presume that this was the original intention of the parties. A very general rule, which would indeed be always adopted in the absence of especial reason to the contrary, is, to apply the payment first to the oldest debt, until that is satisfied, and then go on applying the payment to the other debts in the order of their age.

If A owes a debt to B, on B's own account, and another debt to B as trustee for somebody, and A pays B a sum of money without appropriating it, B cannot apply it all to the debt due him on his own account, but must divide it between that debt and the debt due to him as trustee, in proportion to their respective amounts. Because it is his duty as trustee to take as good care of the debts due to him for another, as of those due to him on his own account.

We have spoken of a "bill or note;" and notes are sometimes called bills; so bank-notes are often called bank-bills. But the legal meaning of "bill" is always a *draft* or *order* on somebody to pay money. A note is a *promise* to pay. See chapter on Notes and Bills.

---

## CHAPTER XVII.

### RECEIPTS AND RELEASES.

A receipt is only an acknowledgment that a sum of money has been paid. It may be in one word, as when, under a bill of parcels, the seller writes the word "paid," and signs it. More commonly the words are "received payment." Formerly it was usual to

add the words "errors excepted." Then it grew customary to write the initial letters "E. E." instead of the words; but all this is unnecessary. If there be an error in the receipt, or in the paper receipted, the law permits the party injured by it to explain and correct the error, although there be no express reservation or exception of errors.

Receipts are of all degrees of fulness, from the single word "paid," to those which relate the particulars for which the receipt is given, and the manner in which the money was paid or the thing delivered. I give the following forms of receipts and releases:—

#### FORMS ANNEXED TO THIS CHAPTER.

- (133.) A receipt in simplest form.
- (134.) A receipt, stating on what account the money is received.
- (135.) A receipt, stating the purpose for which the money or articles are received.
- (136.) A general release.
- (137.) A mutual general release by indenture.
- (138.) A release from creditors to a debtor, under a composition.
- (139.) A release of all legacies.
- (140.) A release of a bond, it being lost.
- (141.) A release of a judgment.
- (142.) A release of a condition.
- (143.) A release of a covenant contained in an indenture of lease.
- (144.) A release in extinguishment of a power.
- (145.) A release from a lessor to a lessee (upon his surrendering his lease), from the covenants therein.
- (146.) A general release of dower.
- (147.) A release of dower to the heir.
- (148.) A release of dower, in consideration of an annuity given by will.
- (149.) A release of dower, where the present husband of the widow joins in the deed.
- (150.) A release of a trust.
- (151.) A release of right to lands.
- (152.) A release between two traders, on settling accounts.

(133.)

#### A RECEIPT IN SIMPLEST FORM.

(Date). This day I have received from  
dollars.

(Signature.)



discharged, and by these presents do, for me, my heirs, executors, and administrators, remise, release, and for ever discharge, the said his heirs, executors, and administrators, of and from all and all manner of action and actions, cause and causes of action, suits, debts, dues, sum and sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, extents, executions, claims, and demands whatsoever, in law and in equity, which against the said I ever had, now have, or which I, my executors or administrators, hereafter can, shall, or may have, for, upon, or by reason of, any matter, cause, or thing whatsoever, from the beginning of the world to the day of the date of these presents.

IN WITNESS WHEREOF, &c.

(Signature.) (Seal.)

(137.)

#### A MUTUAL GENERAL RELEASE BY INDENTURE.

THIS INDENTURE, Made between of and of witnesseth, That the said doth by these presents remise, release, and for ever quitclaim unto the said all and all manner of actions (*as before*); and this indenture further witnesseth, That the said by these presents, doth remise, release, and for ever quitclaim unto the said all and all manner of actions (*as before*).

IN WITNESS WHEREOF, &c.

(Signature.) (Seal.)

(138.)

#### A RELEASE FROM CREDITORS TO A DEBTOR, UNDER A COMPOSITION.

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME, We who have hereunto set our hands and seals, creditors of of send greeting. Whereas the said is indebted to us, his said creditors, in several sums of money, which he is not able fully to satisfy and discharge; we therefore have agreed, and do hereby agree, to accept of the sum of in full payment and satisfaction of all the debts owing to us respectively at the date hereof, by and from the said which is paid by or for the said (*the name of the debtor*), to (*the names of the persons to whom the money is to be paid for the creditors releasing*),<sup>1</sup> and assignees by virtue of a commission of bankrupt awarded against the said for the use of, and to the intent that the same may be shared and divided amongst, us his said creditors, seeking relief under the said commission, in proportion and according to the debts to us severally due and owing. Now, therefore, know ye, that for the consideration aforesaid, each of us, the said creditors who have hereunto set our hands and seals, for him and herself, his and her heirs, executors, and copart-

<sup>1</sup> The words *following in Italic* may be omitted, according to circumstances.

ners, doth by these presents remise, release, and for ever discharge the said his heirs, executors, and administrators, of and from our said several debts, and all and all manner of action and actions which against the said each and every of us the said creditors now hath, or which each and every of our heirs, executors, or administrators, respectively, hereafter may, can, or ought to have, claim, or demand, for, upon, or by reason of, the said several and respective debts to us severally due and owing, or for or by reason of any other matter, cause, or thing whatsoever, from the beginning of the world until the day of the date hereof.

IN WITNESS WHEREOF, &c.

(Signature.) (Seal.)

(139.)

#### A RELEASE OF ALL LEGACIES.

KNOW ALL MEN BY THESE PRESENTS, That I of widow, have remised, released, and for ever quitclaimed, and by these presents do for me unto of gentleman, executor of the last will and testament of late of deceased, and to the heirs, executors, and administrators of the said all legacies, gifts, bequests, sum and sums of money and demands whatsoever, bequeathed and given unto me the said in and by the last will and testament of deceased, and all and all manner of actions and suits, sum and sums of money, debts, duties, reckonings, accounts, and demands whatsoever, which I the said ever had, now have, or that I, my executors or administrators, can or may, at any time or times hereafter, have, challenge, or demand against the said his executors, administrators, or assigns, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world until the day of the date hereof.

IN WITNESS WHEREOF, &c.

(Signature.) (Seal.)

(140.)

#### A RELEASE OF A BOND, IT BEING LOST.

TO ALL TO WHOM THESE PRESENTS MAY COME (*name of releasor*), sendeth greeting. Whereas by his bond or obligation, bearing date (*recite the bond*), as by the said bond or obligation, and the condition thereof may appear. And whereas the sum of mentioned in the said bond, with all the interest for the same, is paid and satisfied unto me the said in full discharge for the said bond or obligation. And whereas the said bond or obligation is lost, or at present mislaid, so that it cannot be found to be delivered up to the said to be cancelled. Now know ye, that I the said for the consideration aforesaid, have remised, released, and quitclaimed, and by these

presents do, for me, my executors and administrators, remise unto the said his heirs, executors, and administrators, as well the said recited bond or obligation, as all such sums of money as therein are mentioned to be due and payable, unto me the said my executors, administrators, or assigns; and also all actions, suits, cause and causes of action, accounts, debts, reckonings, sums of money, judgments, executions, and demands whatsoever, which I the said ever had, now have, or that I, my executors, administrators, or assigns, or any of us, can or may have, for or against the said his executors or administrators, for, or by reason of, the said recited bond or obligation, or any other matter, cause, or thing whatsoever, concerning the same, from the beginning of the world to the day of the date hereof.

IN WITNESS WHEREOF, I the said have hereunto set my hand and seal, this day of

(Signature.) (Seal.)

In presence of

(The following covenant may be inserted before "In witness.")

And I, the said for me, my executors do covenant to and with the said his that if I the said my executors, or any of us, at any time hereafter, do find or can obtain the said recited bond or obligation, then I the said my executors or some of us, shall and will, within two months next after the said obligation shall be found as aforesaid, deliver, or cause to be delivered, the said bond or obligation unto the said his

(141.)

#### A RELEASE OF A JUDGMENT.

THIS INDENTURE, Made the day of in the year one thousand eight hundred and between of the first part, and of the second part.

WHEREAS, Judgment was rendered on the day of in the year one thousand eight hundred and in an action in the between plaintiff and defendant in favor of the said against the said for the sum of as appears by the

NOW THIS INDENTURE WITNESSETH, That the said part of the first part, in consideration of the sum of to duly paid at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, ha granted, released, discharged, and set over, and by these presents do grant, release, discharge, and set over, unto the said part of the second part, the following described premises, to wit:

TOGETHER with the hereditaments and appurtenances thereto belonging; and all the right, title, and interest of the said part of the first part, of, in, and to the same, to the intent that the lands hereby conveyed



may be released and discharged from the said above-mentioned judgment, and from all lien or incumbrance that has attached to the same, by reason of the recovery of the said judgment, as free and clear in all respects as though said judgment had not been rendered. To have and to hold the lands and premises hereby released and conveyed, to the said part of the second part                      heirs and assigns, to                      their only proper use, benefit, and behoof for ever, free, clear, and discharged of and from all lien and claim, under and by virtue of the judgment aforesaid.

IN WITNESS WHEREOF, The said part                      of the first part ha                      hereunto set                      hand                      and seal                      , the day and year first above written.

(Signatures.)                      (Seals.)

In presence of

(142.)

#### A RELEASE OF A CONDITION.

KNOW ALL MEN BY THESE PRESENTS, That I,                      of                      for divers good considerations me hereunto moving, have demised, released, and quitclaimed, and by these presents, for me, my executors, administrators, and assigns, do                      unto                      of                      his heirs, executors, administrators, and assigns, as well one proviso or condition and all and every the sum and sums of money, specified in the same proviso or condition, contained or comprised in one pair of indentures of                      bearing date                      made between me the said                      of the one part, and the said                      of the other part, and also all and all manner of actions and suits, cause and causes of actions and suits, for or concerning the said proviso or condition.

IN WITNESS WHEREOF, I the said                      have hereunto set my hand and seal, this                      day of                     

(Signature.)                      (Seal.)

In presence of

(143.)

#### A RELEASE OF A COVENANT CONTAINED IN AN INDENTURE OF LEASE.

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME (*name of releasor*) sendeth greeting. Whereas in and by an indenture of lease, bearing date                      made between                      of the one part, and the said                      of the other part, there is contained a covenant in these words following, viz. (*recite the covenant verbatim, as therein contained*), whereunto relation being had, it doth at large appear. Now know ye, that I, the said                      for divers good causes and considerations me hereunto moving, have remised, released, and quitclaimed, and by these presents for me                      do                      unto the said                      his                      the said covenant, grant, clause, agreement, and article,

before rehearsed or recited, and all and every other matter, thing, and things specified, declared, and contained in the same covenant, clause, and agreement, and all the benefit, profit, advantage, and commodity that by any manner of means may or might arise, grow, come, or happen to me the said                    for or by reason of the same covenant, clause, article, or agreement, or any word, sentence, matter, thing, or things therein contained, so that the said                    his executors and assigns, and every of them, from henceforth for ever, shall be fully acquitted, released, and discharged against me the said                    my executors and administrators, and every of us, of, from, and for the said covenant, grant, clause, article, and agreement before rehearsed or recited, and of, from, and for every thing and things touching the same (but this present release shall not in any wise extend to any other covenant, clause, or article in the said indenture contained).

IN WITNESS WHEREOF, I, the said                    have hereunto set my  
hand and seal, this                    day of

(Signature.) (Seal.)

In presence of

(144.)

#### A RELEASE IN EXTINGUISHMENT OF A POWER.

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME, Now know ye, that I, the said                    pursuant to the said agreement, and for divers good causes and considerations me hereunto moving, have released, extinguished, and discharged, and by these presents do fully and absolutely release, extinguish, and discharge, the said recited power for raising the said sum of                    as aforesaid, and all the lands                    therein comprised, or subject thereto, so that I, the said                    shall not nor will, at any time or times hereafter, raise the same, or any part thereof, or hereafter charge the said lands                    with the payment thereof, or any part thereof.

IN WITNESS WHEREOF, I, the said                    have hereunto set my  
hand and seal, this                    day of

(Signature.) (Seal.)

In presence of

(145.)

#### A RELEASE FROM A LESSOR TO A LESSEE (UPON HIS SURRENDERING HIS LEASE) FROM THE COVENANTS THEREIN.

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME (*name of releasor*) sends greeting. Whereas the said                    by his indenture of lease, bearing date                    did demise                    unto a messuage                    in                    at a certain rent, for a certain term of years, of which about                    years are yet to come and undetermined, in which said lease are contained covenants for repairing the said

premises, and other covenants on the part of the said \_\_\_\_\_ to be performed. And whereas, by agreement between the said \_\_\_\_\_ and \_\_\_\_\_ the said \_\_\_\_\_ hath delivered up the said recited lease, and surrendered the same, and all his interest and term in and to the said house and premises. Now, therefore, know ye, that the said \_\_\_\_\_ in consideration thereof, doth hereby, for himself, his heirs, executors, and administrators, remise, release, and for ever discharge the said \_\_\_\_\_ his executors and administrators, of and from all and every the covenants and agreements in the said recited lease contained, by and on the part and behalf of the said \_\_\_\_\_ his \_\_\_\_\_ -to be done and performed, and from all actions, suits, costs, charges, payments, damages, claims, and demands whatsoever, in law and equity, for or concerning the same in any manner of wise.

IN WITNESS WHEREOF, I, the said \_\_\_\_\_ have hereunto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_

(Signature.) (Seal.)

In presence of \_\_\_\_\_

(146.)

#### A GENERAL RELEASE OF DOWER.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*name of releasor*) send greeting. Know ye, that the said \_\_\_\_\_ the party of the first part to these presents, for and in consideration of the sum of \_\_\_\_\_ lawful money of the United States, to her in hand paid at or before the ensembling and delivery of these presents, by \_\_\_\_\_ of the second part, the receipt whereof is hereby acknowledged, hath granted, remised, released, and for ever quitclaimed, and by these presents doth grant, remise, release, and for ever quitclaim, unto the said party of the second part, \_\_\_\_\_ heirs and assigns, for ever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim, and demand whatsoever, in law and equity, of her, the said party of the first part, of, in, and to (*here describe the estate the dower in which is released*), so that she, the said party of the first part, her heirs, executors, administrators, or assigns, nor any other person or persons, for her, them, or any of them, shall not have, claim, challenge, or demand, or pretend to have, claim, challenge, or demand, any dower or thirds, or any other right, title, claim, or demand whatsoever, of, in, or to the same, or any part or parcel thereof, in whosoever hands, seisin, or possession the same may or can be, and thereof and therefrom shall be utterly barred and excluded for ever by these presents.

IN WITNESS WHEREOF, The said party of the first part to these presents hath hereunto set her hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal.)

In presence of \_\_\_\_\_

(147.)

## A RELEASE OF DOWER TO THE HEIR.

KNOW ALL MEN BY THESE PRESENTS, That I, relict of  
late as well for and in consideration of  
to me paid, at or before by my son  
the receipt whereof I do hereby acknowledge, and for the love and affection which I have to my said son, have granted, remised, released, and for ever quitclaimed, and by these presents do unto the said  
his heirs and assigns, for ever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim, and demand whatsoever, in law or in equity, of me the said  
of, in, and to (*a description of the parcel of land in which dower is released*), so that neither I, the said my heirs, executors, or administrators, nor any other person or persons for me, them, or any of them, shall have, claim, challenge, or demand, or pretend to have any dower or thirds, or any other right, title, claim, or demand, of, in, or to the said premises, but thereof and therefrom shall be utterly debarred and excluded, for ever, by these presents.

IN WITNESS WHEREOF, The said party of the first part to these presents hath hereunto set her hand and seal, the day of  
in the year of our Lord one thousand eight hundred and

(Signature.) (Seal.)

In presence of

(148.)

## A RELEASE OF DOWER IN CONSIDERATION OF AN ANNUITY GIVEN BY WILL.

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME (*name of releasor*), widow, relict, and residuary legatee of late of  
deceased, sendeth greeting. Whereas the said  
in and by his last will and testament, duly signed, sealed, published, and declared in my presence and with my approbation, bearing date  
did settle and secure unto and upon me the said an annuity  
of to be paid unto me half-yearly, by equal payments, in lieu  
and full satisfaction of the dower or thirds at common law, which I might otherwise have, claim, or be entitled unto, out of all and every the lands, tenements, and hereditaments whatsoever of my said late husband, deceased, or of, in, to, or out of the reversion or remainder, rents, issues, and profits thereof. Now know ye, that I, the said  
for and in consideration of the said annuity so secured to me as aforesaid, and in pursuance and part performance of the said last will and testament of my said late husband, do hereby declare myself fully satisfied and contented therewith, and do hereby remise, release, and for ever quitclaim unto of and of  
trustees, appointed in and by the said last will and tes-

tament of my said late husband (in their actual possession and seisin now being), their executors all and all manner of dower in and to the said premises, but thereof and therefrom, shall be utterly debarred and excluded, for ever, by these presents.

IN WITNESS WHEREOF, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand eight hundred and

(Signature.) (Seal.)

In presence of

(149.)

A RELEASE OF DOWER, WHERE THE PRESENT HUSBAND OF THE WIDOW JOINS IN THE DEED.

KNOW ALL MEN BY THESE PRESENTS, That (*name of husband*), of and (*name of wife*), his wife, in her right, in consideration of paid them by of the receipt whereof they hereby acknowledge, have granted, remised, released, and for ever quitclaimed, and by these presents do unto the said his heirs and assigns, for ever, all the right which the said hath to dower or thirds, of and in (*here describe the estate*), whereof her late husband (*name of former husband*), late died seised, situate, which she claims as the endowment of the said deceased, and all the right, title, interest, and claim whatsoever, which the said and have or either of them hath, or by law might have, of, in, and to the same To have and to hold the same to the said and his heirs and assigns, for ever; and the said and for themselves, their heirs, executors, and administrators, do hereby covenant with the said and his heirs and assigns, that he and they shall henceforth for ever have and quietly enjoy the released premises, without any claim or demand had or made, or to be had or made, by them, or any persons claiming, or who may claim, the same or any part thereof, by, from, or under them or their heirs.

IN WITNESS WHEREOF, The said party of the first part to these presents hath hereunto set her hand and seal, the day of in the year of our Lord one thousand eight hundred and

(Signature.) (Seal.)

In presence of

(150.)

A RELEASE OF A TRUST.

TO ALL TO WHOM THESE PRESENTS MAY COME (*name of releasor*) sendeth greeting. Whereas, by indenture bearing date made between (*here recite the deed*), in which said indenture the said doth hereby declare, that his name was only used in trust, for the benefit and behoof of of Now know ye,

that I, the said \_\_\_\_\_ in discharge of the trust reposed in me, at the request of the said \_\_\_\_\_ have remised, released, and surrendered, assigned, and set over, and by these presents, for me, my executors and administrators, do freely and absolutely remise \_\_\_\_\_ unto the said \_\_\_\_\_ his executors \_\_\_\_\_ all the estate, right, title, interest, use, benefit, privilege, and demand whatsoever, which I, the said \_\_\_\_\_ have, or may have or claim, of or to the said premises, or of and in any sum of money, or other matter or thing whatsoever, in the said indenture contained, mentioned, and expressed, so that neither I, the said \_\_\_\_\_ my executors or administrators, or any of us, at any time hereafter, shall or will ask, claim, challenge, or demand any interest or other thing, in any manner whatsoever, by reason or means of the said indenture, or any covenant therein contained, but thereof and therefrom, and from all actions, suits, and demands, which I, my executors, administrators, or assigns, may have concerning the same, shall be utterly excluded and for ever debarred, by these presents.

IN WITNESS WHEREOF, The said party of the first part to these presents, hath hereunto set her hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal.)

In presence of \_\_\_\_\_

(151.)

#### A RELEASE OF RIGHT TO LANDS.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of releasor*), of \_\_\_\_\_ in consideration of \_\_\_\_\_ to me paid by (*name of releasee*) the receipt \_\_\_\_\_ have remised, released, and for ever quitclaimed, and by these presents do \_\_\_\_\_ unto the said \_\_\_\_\_ and his heirs, all the estate, right, title, interest, use, trust, claim, and demand whatsoever, both at law and in equity, which I, the said \_\_\_\_\_ have, of, in, to, or out of, all and singular the following described parcel of land (*here describe the land*), so that neither I, the said \_\_\_\_\_ my heirs or assigns, or any other person or persons in trust for me or them, or in my or their name or names, or in the name, right, or stead of any of them, shall or will, can or may, by any ways or means whatsoever, hereafter have, claim, challenge, or demand, any right, title, or interest, property, claim, and demand, of, in, to, or out of the same \_\_\_\_\_ or any of them, or any part thereof, but that I, the said \_\_\_\_\_ my heirs and assigns, and every of them, from all estate, right, title, interest, property, claim, and demand, of, in, to, or out of the said \_\_\_\_\_ or any of them, or any part thereof, are, is, and shall be, by these presents, for ever excluded and debarred.

IN WITNESS WHEREOF, The said party of the first part to these presents hath hereunto set her hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal.)

In presence of \_\_\_\_\_

(152.)

## A RELEASE BETWEEN TWO TRADERS ON SETTLING ACCOUNTS.

WHEREAS sundry accounts, current and otherwise, and divers dealings in trade, have been subsisting for a long time past between  
of                    trader, and                    of                    trader, which said  
accounts and dealings the said                    and                    have balanced  
and adjusted, whereby it appears that nothing remains due from the one  
to the other ; and whereas, therefore, to prevent any future disputes con-  
cerning the said accounts and dealings, and to confirm the said adjustment,  
the said                    and                    have mutually agreed to give recip-  
rocal releases to each other. Now, know all men by these presents, that the  
said (*one of the parties*) (for the considerations abovesaid, and to prevent  
all future disputes), for himself, his executors and administrators, doth  
remise, release, and for ever quitclaim unto the said (*the other party*), his  
all and all manner of action and actions, cause, and causes of  
action, suits, debts, dues, sum and sums of money, accounts, reckonings,  
bonds, specialties, covenants, contracts, controversies, agreements, prom-  
ises, variances, damages, extents, executions, claims, and demands whatso-  
ever, both at law and in equity, which against the said                    his  
the said                    now hath or ever had, on account of  
their said mutual dealings, or for or by reason of any other cause, matter,  
or thing whatsoever, from the beginning of the world to the day of the  
date of these presents.

And the said (*the other party*) (for the considerations abovesaid, and to  
prevent all future disputes), for himself, his executors and administrators,  
doth remise, release, and for ever quitclaim unto the said (*the other party*),  
his                    all and all manner of action and actions, cause and causes  
of action, suits, debts, dues, sum and sums of money, accounts, reckon-  
ings, bonds, specialties, covenants, contracts, controversies, agreements,  
promises, variances, damages, extents, executions; claims, and demands  
whatsoever, both at law and in equity, which against the said .  
his                    the said                    now hath or ever had, on account of  
their said mutual dealings, or for or by reason of any other cause, matter,  
or thing whatsoever, from the beginning of the world to the day of the  
date of these presents.

IN WITNESS WHEREOF, We have hereunto set our hands and seals, this  
day of                    in the year

(Signatures.) (Seals.)

In presence of

## CHAPTER XVIII.

NOTES OF HAND AND BILLS OF EX-  
CHANGE, DRAFTS, AND CHECKS.

## SECTION I.

## THE PURPOSE OF, AND THE PARTIES TO, SUCH PAPERS.

These instruments are usually negotiable. By negotiable paper is meant evidence of debt which may be transferred by indorsement or delivery, so that the transferee or holder may sue the same in his own name, and as if it had been made payable to him originally ; or, in other words, it means paper, that is, bills of exchange or promissory notes, or drafts, or checks, payable to the order of a payee, or to bearer.

Where and when bills of exchange were invented is not certainly known. They were not used by any ancient nations, but have been employed and recognized by most commercial nations for some centuries. A still more recent invention is the promissory negotiable note, which, in this country, for inland and domestic purposes, has taken the place of the bill of exchange very generally. Besides these two, bills of lading and some other documents have a kind of negotiability, but it is quite imperfect. The utility of bills and notes in commerce arises from the fact that they represent money, which is the representative of the market value of every thing ; and many of the peculiar rules respecting negotiable paper are derived from this representation, and intended to make it adequate and effectual.

The rules of law on the subject of negotiable paper are more exact and technical than those of any other department of mercantile law. They reach, on many points, an extreme nicety, which makes it difficult to express them intelligibly to persons who do not already possess some familiarity with the subject. All difficulty of this kind could have been easily avoided by me, by omitting any notice of these nice points. But it was thought better to mention them, one and all, for these are the things an intelligent man of business should know ; and although the rules stated, especially those in reference to presentment, demand, notice, and some other subjects, may seem to be intricate and difficult, they require, it is believed, only careful consideration to be fully understood.



A negotiable bill of exchange is a written order whereby A orders B to pay to C *or his order*, or *to bearer*, a sum of money, absolutely and at a certain time.

(153.)

COMMON FORM OF A BILL OF EXCHANGE.

Value received, please pay to C New York, January 5, 18  
 in or order, dollars,  
 days (*or months*) after sight (*it may be after date*), on  
 account of

(Signed) A

To B

A is the drawer, B the drawee, and C the payee. If the bill is presented to B, and he agrees to obey the order, he "accepts" the bill, and this he does in a mercantile way, by writing the word "accepted" across the face of the bill, and also writing his name below this word; then the drawee becomes the acceptor. If C, the payee, chooses to transfer the paper and all his rights under it to some other person, he may do this by writing his name on (usually across) the back; this is called indorsement, and C then becomes an indorser. The person to whom C thus transfers the bill is an indorsee. The indorsee may again transfer the bill by writing his name below that of the former indorser, and the indorsee then becomes the second indorser; and this process may go on indefinitely. If the added names cover all the back of the note, a piece may be wafered on to receive more. In France, this added piece is called "*allonge*," and this word is used in some of our law-books, but not by our merchants.

(154.)

COMMON FORM OF A PROMISSORY NOTE.

Value received, I promise to pay B New York, January 5, 18  
 dollars, in or order,  
 days (*or months, or on demand*) from date.

(Signature.)

It is best to write the words "from date," although they are often omitted, and the law construes the note as if they were written.

It is quite important to have a clear idea of the difference between the parties to a note and the parties to a bill of exchange.

If A makes a note to B, then A promises to pay, and is the promisor, and B is the promisee, or payee. But if it be payable to B or order, B may write his name across the back, that is, may indorse it, and is an indorser. And if he directs, over his signature on the back, that the note be paid to any person in particular, such payee is now an indorsee. But when a bill is drawn, nobody promises, in words, to pay it. A orders B to pay to C. If B, when requested, says he will not do as ordered, the law supposes A, the drawer, to have promised that he would pay if B did not. If B "accepts," the law now supposes that B promises C to pay the bill to him. Now B, being the acceptor, is held by the law just as a maker of a note is, because he is supposed to have promised in the same way. A, the drawer, is held just as the first indorser of a note is held, because he is supposed to have promised to pay if B did not. If the bill was negotiable, that is, payable to C, or his order, then C may indorse the bill; and although his name is the only one on the back of the bill, he is treated in law only as second indorser, because the drawer is bound in the same way as a first indorser. And if D then puts his name below C's, he is treated as third indorser, and so on. For the rights, obligations, and duties of all these parties, see the subsequent sections.

**We repeat, that a negotiable promissory note is a written promise to pay to a certain person or his order, or to bearer, at a certain time, a certain sum of money; and he who signs this is called the maker or the promisor; the other party is the promisee or payee. The payee of such a note has the same power of indorsement as the payee of a bill of exchange. If the note be not payable "to order," nor to "bearer," it is then not negotiable: these words, "or order" or "to bearer," being the words which make it negotiable. The maker of a negotiable note holds, as has been said, the same position as the acceptor of a bill, the drawer the same as the first indorser of a note; that is, a party holding a note and seeking payment of it, looks first to the maker, and then to the indorser; one holding a bill looks first to the drawee or acceptor, and, on his failure, to the drawer.**

**Neither indorsement nor acceptance nor making is complete until delivery and reception of the bill or note or acceptance; and a defendant may show that there was no legal delivery of the paper.**

**The law of negotiable paper first defines a bill or note, and determines what instruments come under these names, and then describes and ascertains the duties and obligations of all the parties we have named above. We shall follow this order.**

## SECTION II.

**WHAT IS ESSENTIAL TO A NEGOTIABLE NOTE OR BILL.**

A written order or promise may be perfectly valid as a written contract or promise, but, although made "to order," will not be *negotiable*, unless certain requisites of the law-merchant are complied with.

The difference between a note that is negotiable and one that is not, is very important in many respects. One of these is as to the operation of the trustee process, or foreign attachment, or garnishee process, as it is sometimes called. If A owes B a hundred dollars, C, a creditor of B, may *trustee* A (to use the common phrase), and A must then pay to C what he owes to B. And this is so, even if A have given his note to B for the hundred dollars, if the note be *not negotiable*, that is, not to B or order. But if the note be negotiable, A cannot be trustee. The reason is, that if he is obliged to pay the money to C, and B should indorse the note to D for value, and D take it honestly, A must pay the note to D, and so would have to pay it twice. But if the note is not negotiable, B cannot indorse it, and A is safe in paying the money over to C.

1. **The Promise must be absolute and definite.** — The promise of the note, and the order of the bill, must be absolute. Words expressive of intention only do not make a promissory note, and a mere request without an order does not make a bill of exchange. But no one word, and no set of words, are absolutely necessary; for if from all the language the distinct promise or positive order can be inferred, that is sufficient.

The time of payment is usually written in a bill or note; if not, it is payable on demand. The time of payment must not depend on a contingency. In fact, any contingency apparent on the face of the instrument prevents it from being a negotiable note; and the happening of the contingency does not cure it. And the payment promised or ordered must be of a definite sum of money.

A negotiable bill of exchange or promissory note must be payable in money only, and not in goods or merchandise, or property of any kind, or by the performance of any act. If payable in "current funds," or "good bank-notes," or "current bank-notes," this should not be sufficient on general principles, and according to many authorities; some courts, however, construe this as meaning notes convertible on demand into money, and therefore as the same thing as money, and call the note negotiable.

A bill or note may be written upon any paper or proper substitute for it, in any language, in ink or pencil. A name may be signed or indorsed by a mark; and, though usually written at the bottom, it may be sufficient if written in the body of the note; as, "I, A B, promise," &c.; unless it can be shown that the note was incomplete, and was intended to be finished by signature. If not dated, it will be considered as dated when it was made; but a written date is *prima facie* evidence (this means evidence which may be overcome by opposite and better evidence, but until so overcome is sufficient) of the time of making. The amount is usually written in figures at the corner or bottom. If the sum is written at length in the body, and also in figures at the corner, and they differ, the written words control the figures, and evidence is not admissible to show that the figures were right and the words inaccurate. But in an American case, a promissory note, expressed to be for "three hundred dollars," and in figures in the margin, \$300, was held to be a good note for three hundred dollars, if the maker when he signed it intended "three" when he wrote "three;" and whether such was his intention was a question for the jury. And the omission of such a word as "dollars," or "pounds," or "sterling," may be supplied, if the meaning of the instrument is quite clear.

It has been just said that any contingency apparent on the face of the instrument prevents it from being a *negotiable* note. Hence it is not safe to write in the body of the note, or in connection with the promise, any condition or contingency. But if what is so written in no way affects the promise itself, the note may still be negotiable.

Thus, in some parts of this country, persons who sell a machine, or other thing, on a credit, sometimes take a promissory note payable to the seller *or order*, and containing an additional clause, providing that, until the note is paid, the property in the thing sold (or the ownership of it) shall be and remain in the seller. Such notes are often made in the following form:—

(155.)

FORM OF A NOTE GIVEN FOR A CHATTEL SOLD, WITH A CONDITION PRESERVING THE OWNERSHIP OF THE SELLER.

\$			(Place and date) 18
On the	day of	18	I (or we), the subscriber, whose
P. O. is	county of		and State of
promise to pay	or order		dollars at the First National
Bank in	with interest at		per cent per annum until

paid. And it is further agreed that the title to the (*reaper*), for which this note is given, shall remain in said (*the seller*) until this note is fully paid.

*Value received*

(*Witness.*)

(*Signature.*)

*On the back of this note is sometimes the following statement:—*

STATEMENT MADE FOR THE PURPOSE OF OBTAINING CREDIT.

I own                      acres of land in my own name in the town of  
county of                      and State of                      which is worth, at a fair  
valuation, \$

It is not incumbered by mortgage or otherwise, except the amount of  
\$                      and the title is perfect in me in all respects. I have stock  
and personal property to the amount of \$                      over and above my  
debts and liabilities.

The above property being worth, over and above my debts, liabilities,  
and exemptions, at least FIVE TIMES the amount of the within note.

The question has arisen whether such a note is negotiable. Suppose the seller of the chattel, who is payee of the note, sells the note and indorses it for value to an innocent indorsee, and then the buyer finds that he was cheated, and puts in this defence of fraud when he is sued on the note by the indorser. He can make this defence if this note be *not negotiable*; but he cannot make it if it be *negotiable*. I should say it was negotiable; and that the only effect of the condition or provision annexed to the promise was, that it operated much as a mortgage of the thing by the buyer back to the seller, to secure the payment.

**2. The Payee must be designated.**—The payee should be distinctly named, unless the bill or note be made payable to bearer. If it can be gathered from the instrument, by a reasonable or necessary construction, who is the payee, that is enough. The note may be made payable to the promisor or his order; that is, a man may say, I promise to pay to my own order; and such note is nothing until the promisor not only signs it, but indorses it.

A note indorsed in blank is always transferable by delivery, just as if it were made payable to bearer; because any holder may write over the indorsement an order to pay to himself. Indorsements are either *indorsements in blank*, by which is meant the name of the indorser and nothing more, or *indorsements in full*, which are so called when over the name of the *indorser* is written, "pay to A B." (By A B we mean the name of the person to whom the note or bill is indorsed.) These two kinds of indorsements are fully explained subsequently in this chapter. A note to the order of

the promisor himself, and indorsed by him in blank, is therefore much the same thing as a note to bearer. But it is quite commonly used in our mercantile cities, because the holder can always pass it away without indorsing if he chooses, or can put his name on it as second indorser if he likes to. If the indorsee be named, and the note get into the possession of a wrong person of the same name, this person neither has nor can give a title to it. If the name be spelt wrong, evidence of intention is receivable. If a father and son have the same name, and either of them has possession of the note and indorses it, this would be evidence of his rightful ownership.

If neither payable to bearer, nor to the maker's or drawer's order, nor to any other person, it would be an incomplete and invalid instrument.

A note to a fictitious payee, with the same name indorsed by the maker, would undoubtedly be held to be the maker's own note, either payable to bearer, or to himself or order by another name, and so indorsed. If a blank be left in a bill for the payee's name, a *bona fide* (or honest) holder may fill it with his own, the issuing of the bill in blank being an authority to a *bona fide* holder to insert the name. And if the name of the payee be not the name of a person, as if it be the name of a ship, the instrument is payable to bearer. A note payable to different persons in the alternative, — that is, to one or the other of them, — is not a good promissory note. A bill or note "to the order of" any person is the same as if to him "or his order," and may be sued by him without indorsement.

**3. Of Ambiguous and Irregular Instruments.** — The law in relation to protest and damages makes it sometimes important to distinguish between a promissory note and a bill of exchange, because by law a foreign bill of exchange, if unpaid, should be protested, but not a promissory note; but it is a common practice to protest promissory notes when they are not paid. The rule in general is, that, if an instrument be so ambiguous in its terms that it cannot be certainly pronounced to be one of these to the exclusion of the other, the holder may elect and treat it as either. As if written, "Value received, in three months from date, pay the order of H. L. \$500. (Signed) A. B.;" and an address or memorandum at the bottom, "At Messrs. E. F. & Co."

**4. Of Bank-notes.** — Bank-notes or bank-bills are promissory notes of a bank, payable to bearer; and, like all notes to bearer, the property in them passes by delivery. They are intended to be used as money; and while a finder, or one who steals them, has no title himself against the owner, still, if he passes them away to a *bona*

*fide* holder, — that is, a holder for value without notice or knowledge, — such owner holds them against the original owner. And if the bank pays them in good faith on regular presentment, the owner has no claim. They pass by a will bequeathing money. They are a good tender, unless objected to at the time because not money. Forged bills, given in payment, are a mere nullity. Bills of a bank which has failed, but of which the failure is unknown to both parties, are now generally put on the footing of forged or void bills. But if the receiver of them, by holding them, and by a delay of returning or giving them up, injures the payer and impairs his opportunity or means of indemnity, the receiver must then lose them.

**5. Of Checks on Banks.** — A check on a bank is undoubtedly a bill of exchange; but usage and the nature of the case have introduced some important qualifications of the general law of bills in its application to checks. A check requires no acceptance, because a bank, after a customary or reasonable time has elapsed since deposit, and while still in possession of funds, is bound to pay the checks of the depositors. The drawer of a check is not a surety, as is the drawer of a bill, but a principal debtor, like the maker of a note. Nor can a drawer complain of any delay whatever in the presentment; for it is an absolute appropriation, as between the drawer and the holder, to the holder of so much money in the banker's hands; there it may lie at the holder's pleasure. But delay is at the holder's risk; for if the bank fails after he could have got his money on the check, the loss is his. If the bank, before he presents his check, pay out all the money of the drawer on other checks, he may then look to the drawer.

If one who holds a check as payee, or otherwise, transfers it to another, he has a right to insist that the check shall be presented in the course of the banking hours of that day, or at farthest the next; that is, he is not responsible for the failure of the bank to pay, unless it is so presented, provided it would then have been paid. And if the party receiving the check live elsewhere than where the bank is, it seems that he should send it for collection the next day; and if to an agent, the agent should present it, at latest, in the course of the day after he receives it. If the check be drawn when the drawer neither has funds in the bank, nor has made any arrangement by which he has a right to draw the check, the drawing it is a fraud, and the holder may bring his action at once against the drawer, without presentment of the check at the bank, or notice of non-payment.

Checks are seldom accepted. But they are often marked by the bank as good; and this binds the bank as an acceptor.

Checks are usually payable to bearer, but may be and often are drawn payable to a payee or his order; for this guards against loss or theft, because the check will not be paid unless the payee writes his name on it; and it gives to the drawer, when the check is paid and returned by the bank to him, what is the same as the receipt of the payee. Generally, a check is not payment until it is cashed; then it is payment if the money was paid to the creditor, or the check had passed through his hands. A bank cannot maintain a claim for money lent and advanced, merely by showing the defendant's check paid by them; because the general presumption is, that the bank paid the check because it was drawn by a depositor against funds.

While the death of a drawer countermands his check, if the bank pay it before notice of the death reaches them, they are discharged. This would seem to be almost a necessary inference from the general purpose of banks of deposit, and the use which merchants make of them.

If a bank pay a forged check, it is so far its own loss, that the bank cannot charge the money to the depositor whose name was forged. But the bank could recover the money back from one who presented a forged check, and was paid, provided the payee, if innocent, loses no opportunity of obtaining indemnity in the mean time; that is, provided the payee loses nothing by the bank's paying the check; and provided he can be put in as good a position as if the bank had refused to pay it. But if somebody must lose, the bank should, because it is the duty of the bank to know the writing of its own depositors. If it pay a check of which the amount has been falsely and fraudulently increased, it can charge the drawer only with the original amount. But if the drawer himself causes or facilitates the forgery, as by so carelessly writing it or leaving it in such hands that the forgery or alteration is easy, so that it may be called his fault, and the bank is innocent, then the loss falls on the drawer. If many persons, not partners, join in a deposit, they must join in a check; but if one or more abscond, a court of equity will permit the remainder to draw the money.

**6. Of Accommodation Paper.** — An accommodation bill or note is one for which the acceptor or maker has received no consideration, but has lent his name and credit to accommodate the drawer, payee, or holder. Of course he is bound to all other parties precisely as if there were a good consideration; for, otherwise, it would not be an effectual loan of credit. But he is not bound to the party whom he thus accommodates; on the contrary, that party is



bound to take up the paper, or to provide the accommodation acceptor or maker, or indorser, with funds for doing it, or to indemnify him for taking it up. And if, before the bill or note is due, the party accommodated provides the party lending his credit with the necessary funds, he cannot recall them; and if he becomes bankrupt, they remain the property of the accommodation acceptor, or maker, who, if sued on the bill or note, can charge the party accommodated with the expense of defending the suit, even if the defence were unsuccessful, if he had any reasonable ground of defence, because the defence was for the benefit of the party accommodated; inasmuch as he must repay the accommodating party if he pays the bill or note.

**7. Of Foreign and Inland Bills.**—Bills of exchange may be foreign bills, or inland bills. Foreign bills are those which are drawn or payable in a foreign country; and for this purpose, each of our States is *foreign* to the others. Inland bills are drawn and payable at home. Every bill is, on its face, an inland bill, unless it purports to be a foreign bill. If foreign on its face, evidence is admissible to show that it was drawn and payable at home. If a bill be drawn and accepted here, but afterwards actually signed by the drawer abroad, it is a foreign bill. If a foreign bill be not accepted, or be not paid at maturity, it should at once be protested by a notary public. Inland bills are generally, and promissory notes frequently, protested; but this is not generally required by the law. The holder of a foreign bill, after protest for non-payment, or for non-acceptance, may sue the drawer and indorser, and recover the face of the bill, and, in addition thereto, his damages, which damages, on protest, are generally adjusted in this country by various statutes,—which give greater damages as the distance is greater; and an established usage would supply the place of statutes if they were wanting.

**8. Of the Law of Place.**—The different States of the Union are, as to questions arising under mercantile law, *foreign countries as to each other*. Important questions sometimes arise in the case of foreign bills (as well as in some other cases, for which see the chapter on the Law of Place), dependent upon what is called the law of place, the Latin phrase for which, *lex loci*, is often used. In general, every contract is to be governed by the law of the place where it is made. Thus, if a bill is drawn in France, and there indorsed in a way which is sufficient here, but insufficient there, the indorsement would here be held void. But if a contract entered into in one place is to be performed in another, as in the case of a note dated or a bill drawn in one State, but payable in another,

the prevailing rule is, that the law of the place where the note is payable construes and governs the contract. Therefore, if a bill be drawn in England, payable in France, the protest and notice of dishonor must be regulated by the law of France. But one who makes such a note may elect, for many purposes, which law shall govern it. Thus, if he makes it in Chicago, and it is payable in New York, he may promise to pay the legal interest of Chicago, and will be bound to this payment in New York, although the legal interest in New York is less; but if there be no such express promise, the interest payable will be that of the place where the note is payable.

While the law of the place of the contract interprets and construes it as a *debt*, and determines how large the debt is or how much is due upon it, the law of the place where it is put in suit — which is called the law of the forum, or court — determines all questions as to *remedy*; that is, all questions which relate to the legal means of recovering the debt. Thus, in general, the statutes of limitation of the place of the court are applied. But if a cause of action relating to any special subject-matter which has a definite location, as a parcel of land has, be barred by a statute of limitation where the subject-matter is situated, it is barred everywhere. A promisor, not subject to arrest in the country where the note is made, may be arrested under the laws of the country where the note is sued.

It will always be presumed, in the absence of testimony, that the law of a foreign country is the same with that of the country in which the suit is brought. If a difference in this respect is a ground of defence, or of action, it must be proved by evidence.

### SECTION III.

#### THE CONSIDERATION OF NEGOTIABLE PAPER.

**1. Exception to the Common-law Rule, in the Case of Negotiable Paper.** — By the common law of England and of this country, as we have seen, no promise can be enforced, unless made for a consideration, or unless it be sealed. But bills and notes payable to order, that is, negotiable, are, to a certain extent, an exception to this rule. Thus, an indorsee cannot be defeated by the promisor showing that he received no consideration for his promise; because the promisor made an instrument for circulation as money; and it would be fraudulent to give to paper the credit of his name, and then refuse to honor it. But as between the maker and the payee, or between indorser and indorsee, and, in general, between any two

*immediate* parties, the defendant may rely on the want of consideration, — that is, if an indorsee sues the maker, and the maker says he had no consideration for the note, — this is no defence; but if the indorsee sues his indorser, and the indorser shows that the indorsee paid him nothing, this would be a good defence; and so it would be if the payee sued the maker. So, if a distant indorsee has notice or knowledge, when he buys a note, that it was made without consideration, he cannot recover on it against the maker, unless it was an accommodation note, or was intended as a gift.

Thus, if A supposes that a balance is due from him to B, and gives B his negotiable note for the amount, and afterwards discovers that the balance is the other way, B cannot recover of A; nor can any third or more distant indorsee *who knows these facts before buying the note*. But if A gives B his note wholly without consideration, for the purpose of lending him his credit, or for the purpose of making him a gift to the amount of the note, and C buys the note with a full knowledge of the facts, he will nevertheless hold A, although B could not. If the note was bought honestly for a fair price, the buyer should recover its whole amount. Every promissory note *imports* a consideration; that is, none, in the first place, need be proved; but when want of consideration is relied on in defence, and evidence is given on one side and the other, the burden of proof is on the plaintiff to satisfy the jury that a consideration was given.

If an indorser, sued by an indorsee, shows that the note was originally made in fraud, he may require the holder to prove that he paid consideration; but if this be proved, he must pay the whole of the note, unless he was himself defrauded by the holder. And if an accommodation note be discounted in violation of the agreement of the party accommodated, the holder can still recover, provided he received the note in good faith, and for valuable consideration.

2. Of "Value received." — "Value received" is usually written, and therefore should be; but is not necessary. If not written, it will be presumed by the law, or may be supplied by the plaintiff's proof. If expressed, it may be denied by the defendant, and disproved. And if a special consideration be stated in the note, the defendant may prove that there was no consideration, or that the consideration was different. If "value received" be written in a note, it means received by the maker from the payee; if the note be payable to the bearer, it means received by the maker from the holder. In a bill, "value received" means that the value was received from the payee by the drawer. But if the bill be payable

to the drawer's own order, then it means received by the acceptor from the drawer.

**3. What the Consideration may be.**—A valuable consideration may be either any gain or advantage to the promisor, or any loss or injury sustained by the promisee at the promisor's request. A previous debt, or a fluctuating balance, or a debt due from a third person, might be a valuable consideration. So is a *moral* consideration, if founded upon a previous legal consideration; as, where one promises to pay a debt barred by the statute of limitations, or by infancy. But a *merely* moral consideration, as one founded upon natural love and affection, or the relation of parent and child, is no legal consideration.

No consideration is sufficient in law if it be illegal in its nature; and it may be illegal because, first, it violates some positive law, as, for example, the Sunday law, or the law against usury. Secondly, because it violates religion or morality, as an agreement for future illicit cohabitation, or to let lodgings for purposes of prostitution, or an indecent wager; for any bill or note founded upon either of these would be void. Thirdly, if distinctly opposed to public policy, as an agreement in restraint of trade, or injurious to the revenue; or in restraint of marriage; or for procurement of marriage; or for suppressing evidence; or withdrawing a prosecution for felony or public misdemeanor.

#### SECTION IV.

##### THE RIGHTS AND DUTIES OF THE MAKER.

The maker of a note or the acceptor of a bill is bound to pay the same at its maturity, and at any time thereafter, unless the action be barred by the statute of limitations, or he has some other defence under the general law of contracts. As between himself and the payee of the note or bill, he may make any defences which he could make on any debt arising from simple contract, as want or failure of consideration; payment, in whole or in part; set-off; accord and satisfaction; or the like. The peculiar characteristics of negotiable paper do not begin to operate, so to speak, until the paper has passed into the hands of third parties. Then, the party liable on the note or bill can make none of these defences, unless the time or manner in which it came into possession of the holder lays him open to these defences. But the law on this subject may better be presented in our next section.

## SECTION V.

**THE RIGHTS AND DUTIES OF THE HOLDER OF NEGOTIABLE PAPER.**

**1. What a Holder may do with a Bill or Note.**—An indorsee has a right of action against all whose names are on the bill when he received it. And if one delivers a bill or note which he ought to indorse and does not, the holder has an action against him for not indorsing, or may proceed in a court of equity to compel him to indorse. If a bill comes back to a previous indorser, he may strike out the intermediate indorsements and sue in his own name, as indorsee; but he has, in general, no remedy against the intermediate parties, because, if he made them pay as indorsers to him, they would make him pay as indorser to them. If, however, the circumstances are such that *they*, if compelled to pay, would have no right against him as an indorser to them, as, for example, if he indorsed it “without recourse,” then he may have a claim against them.

The holder of a bill indorsed and deposited with him for collection, or only as a trustee, can use it only in conformity with the trust. And if the indorsement express that it is to be collected for the indorser's use, or use any equivalent language, this is notice to any one who discounts it; and the party discounting the paper against this notice will be obliged to deliver the note, or pay its contents, if collected, to the indorser. Thus, Mr. Sigourney, a merchant in Boston, remitted to Mr. Williams, a London banker, for collection, a bill of exchange indorsed by Sigourney, and over his name was written, “Pay to Williams or order for my use.” Williams had the bill discounted for his own benefit by his bankers, and failed; and the English court held that the indorsement showed that the bill did not belong to Williams, and that the discounters had no right to discount it for him; and they were obliged to pay the amount of it to Sigourney.

**2. Of a Transfer after Dishonor of Negotiable Paper.**—Until the time has come when a note or bill is payable, everybody has a right to believe that it has not been paid, and will be paid at maturity, and may purchase it in that belief. But as soon as it is overdue, the date shows this, and every person must know that it is either paid, and so extinguished, or that it has not been paid, and therefore is dishonored, and that there may be good reasons why it was not paid, or good defences against it. He, therefore,

now takes it at his own peril; and therefore a holder who took the note after it became due is open to many of the defences which the promisor could have made against the party from whom the holder took it; because, having notice that the bill or note is dishonored, he ought to have ascertained whether any, and, if so, what defence could be set up.

So, too, if an indorsee takes the note or bill before it is due, but with notice or knowledge of fraud or other good defence which could be made against his indorser if he sued it, it is a general rule that the same defence may be made against him.

**A promissory note payable on demand is considered as intended** to be a continuing security, and therefore as not overdue, unless very old indeed, without some evidence of demand of payment and refusal. But it is not so with a check; for this should be presented without unreasonable delay.

**3. Of Presentment for Acceptance.** — It is most important to the holder of negotiable paper to know distinctly what his duties are in relation to presentment of a bill of exchange for acceptance, or of a bill or note for payment, and notice to others interested in case of non-acceptance or non-payment.

It is always prudent for the holder of a bill to present it for acceptance without delay; for, if it be accepted, he has new security; if not, the former parties are immediately liable; and it is but just to the drawer to give him as early an opportunity as may be to withdraw his funds or obtain indemnity from a debtor who will not honor his bills. And if a bill is payable at sight, or at a certain period after sight, there is not only no right of action against anybody until presentment, but, if this be delayed beyond a reasonable time, the holder loses his remedy against all previous parties. And although the question of reasonable time is generally one only of law, yet, in this connection, it is treated as so far a question of fact, that it is submitted to the jury. There is no certain rule determining what is reasonable time in this respect. If a bill of exchange be payable on demand, it is not like a promissory note, but must be presented within a reasonable time, or the drawer will be discharged. A holder may put a bill payable after sight into circulation, without presenting it himself; and in that case, if a subsequent holder presents it, a longer delay in presentment would be allowed than if the first holder had kept it in his own possession.

The presentment should be made during business hours; but in this country they extend through the day and until evening, excepting in the case of banks. Any distinct usage established where the

presentment is made would probably be received in evidence, and permitted to affect the question.

**Ill health, or other actual impediment without fault, may excuse** delay on the part of the holder; but the request of the drawer to the drawee not to accept does not excuse non-presentment for acceptance.

**Presentment of a bill for acceptance should be made to the** drawee himself, or to his agent authorized to accept. And when it is presented, the drawee may have a reasonable time to consider whether he will accept, during which time the holder is justified in leaving the bill with him; and this time would be as much as twenty-four hours, unless the mail goes out before. But if the holder gives more than twenty-four hours for this purpose, or the mail goes out before, he should inform the previous parties of it. If the drawee has changed his residence, the holder should use due diligence to find him; and what constitutes due or reasonable diligence is a question of fact for a jury. And if he be dead, the holder should ascertain who is his personal representative, if he has one, and present the bill to him. If the bill be drawn upon the drawee at a particular place, it is regarded as dishonored if the drawee has absconded, so that the bill cannot be presented for acceptance at that place. When we come to speak of notice, it will be seen why these rules are important; for a drawer is liable on the bill if the drawee does not accept, and it is reasonable that he should know at once if he is made liable by the drawee's refusal to accept, so that he may save himself from loss if he can.

**4. Of Presentment for Demand of Payment.** — The next question relates to the duty of demanding payment; and here the law is much the same in respect both to notes and to bills.

**The universal rule of the law-merchant is, that the indorsers of** negotiable paper are supposed to agree to pay it *only* if the maker or previous indorsers do not, and *provided* due measures are taken by the holder to get it paid by those who ought, in the first place, to pay it. Every holder of negotiable paper can hold it as long as he likes, and not lose his claim against the *maker* of a note, or the *acceptor* of a bill, unless he holds it more than six years, and the statute of limitations bars his claim. The reason is, that the maker or acceptor promises *directly*, and not merely to pay if another does not. But every indorser of a note or bill, and every drawer of a bill, only promises to pay if a maker or acceptor or some previous indorser does not. If there is a bill of exchange with six indorsers, the last promises in law to pay it only if the acceptor, the drawer, and the five previous indorsers do not pay. He has therefore a right

that a demand according to law should be made against every one of these persons, and that their refusal to pay should be notified to him forthwith, so that he may secure himself if he can. And the law-merchant is very rigorous and precise in defining what demand should be made by the holder, and when and how demand should be made on every *prior* party, in order to hold any *subsequent* party; and also as to what notice of the demand and refusal of the *prior* party should be given to any *subsequent* party to whom the holder looks for payment.

A demand is sufficient if made at the usual residence or place of business of the payer, either of himself, or of an agent authorized to pay; and this authority may be inferred from the habit of paying, especially if the agent be a child, a wife, or a servant. The demand should not be made in the street, although a demand there would probably be held good, unless objected to at the time because made there. When a demand is made, the bill or note should be exhibited; and if lost, a copy should be exhibited, although this is not absolutely necessary. And when the payer calls on the holder, and declares to him that he shall not pay, and desires him to give notice to the indorsers, this constitutes a demand and refusal, provided this declaration be made at the maturity of the paper; but not if it was made before maturity, because the payer may change his intention.

Bankruptcy or insolvency of the payer is no excuse for non-demand; although the shutting up of a bank may be regarded as a refusal to all their creditors to pay their notes. Absconding of the payer is generally a sufficient excuse; but if the payer has shut up his house, the holder must nevertheless inquire after him, and find him, if he can, by proper efforts. Even in case of absconding, it is always better to go through the formality of making a demand at the payer's last residence or place of business; and this is held necessary in some States. If the payer be dead, demand should be made at his house, unless he have personal representatives, and in that case, of them. And if the holder die, presentment should be made by his personal representatives; that is, by his executor or administrator.

If the drawer has no effects in the hands of the drawee, and has no arrangement or understanding which gives him a right to draw, non-presentation for payment is not a defence which he can make if sued on the bill.

Impossibility of presenting a bill or note for payment, without the fault of the holder, as the actual loss of a bill, or the like, will excuse some delay in making a demand for payment; but not more than the circumstances require. And the mere mistake of the holder



as to the time, place, person, or manner, is no excuse, because he has no right to make mistakes to the injury of other people.

**In this country, all negotiable paper payable at a time certain is** entitled to grace, which here means three days' delay of payment, unless it be expressly stated and agreed that there shall be no grace; and a presentment for payment before the last day of grace is premature, the note not being due until that day. If the last day of grace falls on a Sunday, or on a legal holiday, the note is due on the Saturday, or other day before the holiday. But if there be no grace, and the note falls due on a Sunday, or other holiday, it is not payable until the next day.

**Generally, if a bill or note be payable in or after a certain number of days from date, sight, or demand, in counting these days, the day of date, sight, or demand is excluded, and the day on which it falls due included.** And the law would supply the word "*from*," if the word were not used. Thus, a note dated January 1, and payable in "twenty days," would be held payable in twenty days (and three days' grace) *after* the day of the date; that is, on the 24th. If a note is made payable in one or more months, this means calendar months, whether shorter or longer. If made on the 13th of December, and payable in two months, it is payable on the 13th of February, and grace; that is, on the 16th. But if so many days are named, they must be counted, whether they are more or less than a month. Thus, if the above note were payable in sixty days, it would be due on the 11th and grace, or on the 14th of February. If dated 13th January, and payable in sixty days, it would be due on the 14th of March with grace, or on the 17th. If dated on the 28th of October, or the 29th, or the 30th, or the 31st, and is payable in four months, it is in either case (the next year not being leap year) payable on the 28th of February, and with grace, on the 3d of March. And notes dated on the 31st of any month, payable in — months, and falling due in a month of but thirty days, are due on the 30th, with grace.

**Although payment must be demanded promptly, that is, on the day on which it is due, it need not be done instantly; a holder has all the business part of the day in which the bill or note falls due to make his demand in.**

**Bills and notes payable on demand should be presented for payment within a reasonable time.** If said to be "on interest," this strengthens the indication that they were intended to remain for a time unpaid and undemanded. But to hold indorsers, they should still be presented within whatever time circumstances may make a reasonable time; and this is such a time as the interests and safety of all concerned may require; and it may be a few days, or one

or two weeks. A bill or note in which no time of payment is expressed is held to be payable on demand; and evidence to prove it otherwise is inadmissible.

**The holder of a check should present it at once; for the drawer has a right to expect that he will; it should, therefore, be presented, or forwarded for presentment, in the course of the day following that in which it was received, or, upon failure of the bank, the holder will lose the remedy he would otherwise have had against the person from whom he receives it. If the drawer of the check had no funds, he is liable always.**

**Every demand of payment should be made at the proper place, which is either the place of residence or of business of the payer, and within the proper hours of business. If made at a bank after hours of business, if the officers are there, and refuse payment for want of funds, the demand is sufficient.**

**A note payable at a particular place should be demanded at that place; and a bill drawn payable at a particular place should be demanded there, in order to charge the drawer of a bill, and the indorsers of a bill or note. But in this country an action may be maintained against the maker or acceptor without such demand; but the defendant may discharge himself of damages and costs beyond the amount of the paper, by showing that he was ready at that place with funds. If a note is payable at any of several different places, presentment at any one of them will be sufficient. If a bill which is drawn payable generally be accepted payable at a particular place, the holder may and should so far regard this as non-acceptance that he should protest and give notice. But if this limited acceptance is assented to and received, it must be complied with by the holder, and the bill must be presented for payment at that place, or the drawer and indorsers are discharged.**

**If payable at a banker's, or at the house or counting-room of any person, and such banker or person becomes the owner at maturity, this is demand enough; and if there are no funds deposited with him for the payment, this is refusal enough. If any house be designated, a presentment to any person there, or at the door if the house be shut up, is enough.**

**If this direction be not in the body of the note, but added at the close, or elsewhere, as a memorandum, it is not part of the contract, and should not be attended to.**

**If the payer has changed his residence, he should be sought for with due diligence; and, if he has absconded, it is better to make the demand at his last place of residence or business.**

**Where a bill or note is not presented for payment, or not presented at the time, or to the person, or in the place, or in the way,**

required by law, all parties but the acceptor or maker are discharged, for the reasons before stated.

**5. Of Protest and Notice.** — If a bill of exchange be not accepted when properly presented for that purpose, or if a bill or note, when properly presented for payment, be not paid, the holder has a further duty to perform to all who are responsible for payment. In case of non-payment of a *foreign* bill, there should be a regular protest by a public notary; but this is not strictly necessary in the case of an inland bill, or a promissory note, whether foreign or inland. But in practice, all bills if not accepted, and all bills and notes if unpaid, are protested. By a *foreign* bill is meant a bill drawn in one State or country, and payable in another. But notice of non-payment should be given to all antecedent parties, equally, and in the same way, in the case of both bills and notes.

The demand and protest must be made according to the laws of the place where the bill is payable. It should be made by a notary public, who should present the bill himself; but, if there be no notary public in that place or within reasonable reach, it may be made by any respectable inhabitant in the presence of witnesses.

The protest should be noted on the day of demand and refusal, and may be filled up afterwards, even so late as at the trial.

The loss of a bill is not a sufficient excuse for not protesting it. But a subsequent promise to pay by a drawer or indorser is held to imply, or be equal to, a previous protest and notice to him.

The notarial seal is, of itself, evidence of the dishonor of a foreign bill, but not of an inland bill. And no collateral statement in the certificate is evidence of the fact therein stated; thus the statement by a notary, that the drawee refused to accept or pay because he had no funds of the drawer, is no evidence of the absence of such funds.

Notice must be given even to one who has knowledge. No particular form is necessary; it may be in writing, or oral; all that is absolutely essential is, that it should designate the note or bill with sufficient distinctness, and state that it has been dishonored, and also that the party notified is looked to for payment; but it has been held that the notice to the party bound to pay, when given by the immediate holder of the bill, sufficiently implies that he is looked to. Notice of protest for non-payment is sufficient notice to indorsers of demand and refusal. How distinctly the note or bill should be described cannot be precisely defined. It is enough if there be no such looseness, ambiguity, or misdescription as might mislead a man of ordinary intelligence; and if the intention was to

describe the true note, and the party notified was not actually misled, this would always be enough. The notice need not state for whom payment is demanded, nor where the note is lying; and even a misstatement in this respect may not be material if it do not actually mislead.

**No copy of the protest need be sent to indorsers; but information of the protest should be given.**

**If the letter be properly put into the post-office, any miscarriage of the mail does not affect the party giving notice.** The address should be sufficiently specific. Only the surname, — as “Mr. Ames,” — especially if sent to a large city, would not, in general, be enough. If a letter, however generally directed, can be shown to have reached the right person at the right time, it is sufficient. The postmarks are strong evidence that the letter was mailed at the very time these marks indicate; but this evidence may be rebutted, that is, contradicted.

**A notice not only may, but should, be sent by the public post.** It may, however, be sent by a private messenger; but is not sufficient if it do not arrive until after the time at which it would have arrived by mail. It may be sent to the town where the party resides, or to another town, or to a more distant post-office, if it is clear that he may thereby receive the notice earlier. And if the notice is sent to what the sender deems, after due diligence, the nearest post-office, this is enough. If the parties live in the same town, notice should not be sent by mail.

**The notice should be sent either to the place of business or to the residence of the party notified.** But if one directs a notice to be sent to himself elsewhere than at home, it may be so sent, and bind not only him, but prior parties, although time is lost by so sending it.

**The notice of non-payment should be sent within reasonable time; and in respect to negotiable paper, the law-merchant defines this within very narrow limits.** If the parties live in the same town, notice must be given or sent so that the party to whom it is sent may receive the notice in the course of the day next after that in which the party sending has knowledge of the fact. If the parties live in different places, the notice must be sent as soon as by the first practicable mail of the next day, or the next mail, if there be none on the next day.

**Each party receiving notice has a day, or until the next post after the day in which he receives it, before he is obliged to send the notice forward.** Thus, if there be six indorsers, and the note is due on the 10th of May, in New York, and is then demanded and unpaid, the holder may send it by any mail which leaves New York

on the 11th of May, to the last indorser, wherever he lives; and that indorser may send it to the indorser immediately before him, by any mail on the day after he receives it; and so may each of the parties receiving notice; and all the parties to whom notice is sent in this way will be held. So, too, a banker, with whom the paper is deposited for collection, is considered a holder, and entitled to a day to give notice to the depositor, who then has a day for his notice to antecedent parties. The different branches of one establishment have been held distinct holders for this purpose, and each to be entitled to a day.

**Neither Sunday nor any legal holiday is to be computed in reckoning the time within which notice must be given.**

**There is no presumption of notice: and the plaintiff must prove that it was given, and was sufficient.** Thus, proving that it was given in "two or three days" is insufficient, if *two* would have been right, but *three* not.

**Notice should be given only by a party to the instrument, who is liable upon it, and not by a stranger; and it has been held that notice could not be given by a first indorser, who, not having been notified, was not himself liable.** A notice by any party liable will operate to the benefit of all antecedent or subsequent parties; that is, will hold them all to the original holder of the note, if the original holder gave notice properly to the party nearest to him. The notice may be given by any authorized agent of a party who could himself give notice.

**Notice must be given to every antecedent party who is to be held.** And we have seen that this may be given by a holder to the first party liable, and by him to the next, &c. But the holder may always give notice to all antecedent parties; and it is always prudent, and, in this country, usual, to do so; for the holder loses all remedy against all those who are discharged by the failure of any one receiving notice to transmit it properly. But if a holder undertakes to notify *all* the antecedent parties, he must notify all as soon as he was obliged to notify the party nearest to him; that is, the day after the dishonor of the note. We mean by this, that every party has a *day*; so that, if there be six indorsers, if the first indorser is notified on the seventh day from the dishonor, it is enough *if* the holder took his day to notify the sixth indorser, and that indorser his day to notify the fifth, and so on. But the holder has nobody's day but his own; and if he undertakes to notify all the parties, he must notify them all on the first day after the non-payment. If the holder notifies only the last indorser, and that indorser neglects to notify previous indorsers, the holder can hold only the indorser whom he notified.

Notice may be given personally to a party, or to his agent authorized to receive notice, or left in writing at his home or place of business. If the party to be notified is dead, notice should be given to his personal representatives. A notice addressed to the "legal representative of," &c., and sent to the town in which the deceased party resided at his death, has been held sufficient. But a notice addressed to the party himself, when known to be dead, or to "the estate of," &c., would not be of itself sufficient, but might become so with evidence that the administrator or executor actually received the notice.

If two or more parties are jointly liable on a bill as partners, notice to one is enough ; but, if the indorsers are not partners, notice should be given to each.

One transferring by delivery, without indorsement, a note or bill payable to bearer, is not generally entitled to notice of non-payment, because, generally, he is not liable to pay such paper ; but if the circumstances of the case are such as to make him liable, then he must have notice, but is entitled not to the exact notice of an indorser, but only to such reasonable notice as is due to a guarantor. If, for instance, the paper was transferred as security, or even in payment of a pre-existing debt, this debt revives if the bill or note be dishonored ; and therefore there must be notice given of the dishonor.

In general, a guarantor of a bill or note, or debt, is not entitled to such strict and exact notice as an indorser is entitled to, but only to such notice as shall save him from actual injury ; and he cannot make the want of notice his defence, unless he can show that the notice was unreasonably withheld or delayed, and that he has actually sustained injury from such delay or want of notice. If an indorser give also a bond, or his own note, to pay the debt, he is not discharged from his bond or note by want of notice.

In general, all parties to negotiable paper, who are entitled to notice, are discharged by want of notice. The law presumes them to be injured, and does not put them to proof.

The right to notice may be waived by any agreement to that effect prior to the maturity of the paper. It is quite common for an indorser to write, "I waive notice," or "I waive demand," or some words to this effect. It should, however, be remembered that these rights are independent, and one does not imply the other. A waiver of notice of non-payment does not imply a waiver of demand ; therefore, if an indorser writes on the note, "I waive notice," still he will be discharged if there be not a due demand on the maker. And it has been held that a waiver of protest is a waiver of demand, but not of notice. So if a drawer countermands his order, the bill should still be presented, but notice of dishonor need not be given to the

drawer. Or, if a drawer has no funds, and nothing equivalent to funds, in the drawee's hands, and would have no remedy against the drawee or any one else, as the drawer cannot be prejudiced by want of notice, it is not necessary to give him notice. But the indorser must still be notified; and a drawer for the accommodation of the acceptor is entitled to notice, because he might have a claim upon the acceptor.

Actual ignorance of a party's residence justifies the delay necessary to find it out, and no more; and after it is discovered, the notifier has the usual time.

Death or severe illness of the notifier or his agent is an excuse for delay; but the death, bankruptcy, or insolvency of the drawee of a bill is no excuse.

As the right to notice may be waived before maturity, so the want of notice may be cured afterwards by an express promise to pay; and an acknowledgment of liability, or a payment in part, is evidence, but not conclusive evidence, of notice; the jury *may* draw this conclusion from part payment, but are not *bound* to, even if the evidence be not rebutted. If the promise be conditional, and the condition be not complied with, the promise has been held to be still evidence of notice. Nor is it sufficient to avoid such promise that it was made in ignorance of the law; but it is void if made in ignorance of the *fact* of non-notice.

## SECTION VI.

### THE RIGHTS AND DUTIES OF THE INDORSER.

Only a note or bill payable to a payee or order is, strictly speaking, subject to indorsement. Those who write their names on the back of any note or bill are indorsers in one sense, and are sometimes called so, but are not meant in the law-merchant by the word "indorsers."

The payee of a negotiable bill or note — whether he be also maker or not — may indorse it, and afterwards any person, or any number of persons, may indorse it. The maker promises to pay to the payee or his order; and the indorsement is an order on the maker to pay the indorsee, and the maker's promise is then to pay the note to him. If the original promise was to the payee or order, this "or order," which is the negotiable element, passes over to the indorsee, though not written in the indorsement, and the indorsee may indorse, and so may his indorsee, indefinitely.

Each indorser, by his indorsement, does two things: first, he orders the antecedent parties to pay to his indorsee; and next, he engages with his indorsee that, if they do not pay, he will.

If the words "to order," or "to bearer," are omitted accidentally, and by mistake, they may be afterwards inserted without injury to the bill or note; and whether a bill or note is negotiable or not, is a question of law.

By the law-merchant, bills and notes which are payable to order can be effectually and fully transferred only by indorsement. This indorsement may be *in blank* or *in full*. The writing of the name of a payee, — either the original payee or an indorsee, — with nothing more, is an indorsement in blank; and a blank indorsement makes the bill or note transferable by delivery, in like manner as if it had been originally payable to bearer. After a note has been indorsed by a payee, any person may write his name on the note under that of the payee, and be held as indorser, — because any subsequent holder may write over the name of the first indorser a direction to pay the note to the next signer, and this makes the next signer an indorsee, and so gives him a right to indorse; and he or any holder may write over his name an order to pay the holder, or anybody else. If the indorsement consist not only of the name, but of an order above the name, to pay the note to some specified person, then it is an indorsement in full, and the note can be paid to no one else unless that person indorses it; nor can the property in it be fully transferred, except by his indorsement; and his indorsee may again indorse it in blank or in full. If the indorsement is, pay to A B *only*, or in equivalent words, A B is indorsee, but cannot indorse it over.

Any holder for value of a bill or note indorsed in blank, whether he be the first indorsee or one to whom it has come through many hands, may write over any name indorsed an order to pay the contents to himself; and this makes it a special indorsement, or an indorsement in full. This is often done for security; that is, to guard against the loss of the note by accident or theft. For the rule of law is, that negotiable paper transferable by delivery (whether payable to bearer or indorsed in blank) is, like money, the property of whoever receives it in good faith. The same rule has been extended in England to exchequer bills, to public bonds payable to bearer, and to East India bonds; and we think it would extend here to our railroad and other corporation bonds, and, perhaps, to all such instruments as are payable to bearer, whether sealed or not, and whatever they may be called. If one has such an instrument, and it is stolen, and the thief passes it for consideration to a *bona fide* holder, this holder acquires a legal right to it, because the property and possession go together. But if the bill or note be *specially* indorsed, no person can acquire any property in it, except by the indorsement of the special indorsee.



The written transfer of negotiable paper is called an indorsement, because it is almost always written on the back of the note; but it has its full legal effect if written on the face.

Joint payees of a bill or note, who are not partners, must all join in an indorsement.

An indorser may always prevent his own responsibility by writing "without recourse," or other equivalent words, over his indorsement; and any bargain between the indorser and indorsee, written or oral, that the indorser shall not be sued, is available by him against that indorsee; but he cannot make this defence against subsequent indorsees who had no notice of the bargain before they took the note.

Every indorsement and acceptance admits conclusively the genuineness of the signature of every party who has put his name upon the bill previously in fact, and who is also previous in order. By this is meant, that if an indorser—say a third indorser—is sued, he cannot defend himself by saying that the names of the maker and first and second indorsers, or either of them, were forged; because by indorsing it himself he gives his indorsee a right to believe that the previous signatures were genuine. And an acceptor cannot say that his drawers' name is forged; but he may say that an indorsement which was on the bill when he accepted it was forged; because an indorsement of a bill comes properly and in *order of law* after acceptance.

If a holder strike out an indorsement by mistake, he may restore it; if on purpose, the indorser is permanently discharged.

A holder may bring his action against any prior indorser, either by making title through all the subsequent indorsements, or by filling any blank indorsement specially to himself, and suing accordingly; but then he invalidates all the indorsements which are subsequent to that which he has made special to himself.

One may make a note or bill payable to his own order, and indorse it in blank; and this is now very common in our commercial cities, because the holder of such a bill or note can transfer it by delivery, and it needs not his indorsement to make it negotiable further. A note, to the maker's own order, if not indorsed by him, is, strictly speaking, of no force against him. But there is some disposition in the courts to say that a holder of such a note may sue the maker as if the note were to bearer.

A transfer by delivery, without indorsement, of a bill or note payable to bearer, or indorsed in blank, does not generally make the transferer responsible to the transferee for the payment of the instrument. Nor has the transferee a right to fall back, in case of non-payment, upon the transferer for the original consideration

of the transfer, if the bill were transferred in good faith, in exchange for money or goods; for such transfer would be held to be a sale of the bill or note, and the purchaser takes it with all risk.

An indorsement may be made on the paper before the bill or note is drawn; and such indorsement, says Lord Mansfield, "is a letter of credit for an indefinite sum, and it will not lie in the indorser's mouth to say that the indorsements were not regular." The same rule applies to an acceptance on blank paper. So an indorsement may be made after or before acceptance, though strictly proper only after.

A bill or note, once paid at or after maturity, ceases to be negotiable, in reference to all who had been discharged by the payment. If issued again, it is like a new note without their names. If a bill or note is paid before it is due, it is valid in the hands of a subsequent *bona fide* indorsee, and must be paid to him.

A portion of a negotiable bill or note cannot be transferred so as to give the transferee a right of action for that portion in his own name. But if the bill or note be partly paid, it may be indorsed over for the balance.

After the death of a holder of a bill or note, his executor or administrator may transfer it by his indorsement. The husband who acquires a right to a bill or a note which was given to the wife, either before or after marriage, may indorse it.

If the rule, that the same party cannot be plaintiff and defendant, prevents the action, as where A, B, & Co. hold the note of A, C, & Co., so that if a suit were brought A would be one of the plaintiffs and one of the defendants also, which cannot be, A, B, & Co. may indorse the note to D, who may then sue A, C, & Co.

## SECTION VII.

### THE RIGHTS AND DUTIES OF THE ACCEPTOR.

Acceptance applies to bills, and not to notes. It is an engagement of the person on whom the bill is drawn to pay it according to its tenor. The usual way of entering into this agreement, or of accepting, is by the drawee's writing his name across the face of the bill, and writing over it the word "accepted." But any other word of equivalent meaning may be used; and it may be written elsewhere, and it need not be signed, or the drawee's name alone on the bill may be enough. A written promise to accept a future bill, if it distinctly define and describe that very bill, has been held in this

country as the equivalent of an acceptance, if the bill was taken on the credit of such promise.

**A banker is liable to his depositor without acceptance of his checks, if he refuses to pay checks drawn against funds in his hands.**

**If a bill is accepted by a part only of those jointly responsible, or joint drawees, it may be treated by the holder as dishonored; but if not so treated, the parties accepting will be bound.**

**An acceptance may be made after maturity, and will be treated as an acceptance to pay on demand.**

**The acceptance may be cancelled by the holder; and if this cancelling be voluntary and intended, it is complete and effectual; but if made by mistake, by him or other parties, and this mistake can be shown, the acceptor is not discharged. And if the cancelling be by a third party, it is for the jury to say whether the holder authorized or assented to it.**

**If a qualified acceptance be offered, the holder may receive or refuse it. If he refuses it, he may treat the bill as dishonored; if he receives it, he should notify antecedent parties, and obtain their consent, without which they are not liable. But if he protests the bill as dishonored, for this reason, he cannot hold the acceptor upon his qualified acceptance.**

**A bill drawn on one incompetent to contract, as from infancy, marriage, or lunacy, may be treated by the holder as dishonored.**

**A bill can be accepted only by the drawee, — in person or by his authorized agent, — or by *some one who accepts for honor*.**

## SECTION VIII.

### ACCEPTANCE OR PAYMENT FOR HONOR.

**If a bill be protested for non-acceptance or for non-payment, any person may accept it, or pay it *for the honor* either of the drawer or of any indorser. This he usually does by going with the bill before the notary public who protested the bill, and there declaring that he accepts or pays the bill *for honor*; and he should designate for whose honor he accepts or pays it, at the time, before the notary public, and it should be noted by him.**

**A general acceptance *supra protest* (which is the phrase used both by merchants and in law, meaning *upon* or *after protest*) for honor, is taken to be for honor of the drawer. The drawee himself, refusing to accept it generally, may thus accept for the honor of the drawer or an indorser. And after a bill is accepted for honor of one party, it may be accepted by another person for honor of another**

party. And an acceptance for honor may be made at the intervention and request of the drawee.

**No holder is obliged to receive an acceptance for honor; he may refuse it wholly.** If he receive it, he should, at the maturity of the bill, present it for payment to the drawee, who may have been supplied with funds in the mean time. If not paid, the bill should be protested for non-payment, and then presented for payment to the acceptor for honor.

**The undertaking of the acceptor for honor is collateral only,** being an engagement to pay if the drawee does not. It can only be made for some party who will certainly be liable if the bill be not paid; because, by an acceptance or by a payment, properly made, for honor, *supra protest*, such acceptor or payer acquires an absolute claim against the party for whom he accepts or pays, and against all parties to the bill antecedent to him, for all his lawful costs, payments, and damages, by reason of such acceptance or payment. This is an entire exception to the rule that no person can make himself the creditor of another without the request or consent of that other; but it is an exception established by the law-merchant.

**The reason why bills of exchange are sometimes accepted or paid for honor** is to save the party for whose honor this is done from the very heavy damages of a protested bill.

**In many of our States it is a common practice to give a promissory note,** and include in it a *confession of judgment*, for the amount. A suit may then be brought on the note as soon as it is due and unpaid, and a judgment taken out at once without the delay of a trial; and execution may issue on the judgment. Sometimes by the same note the promisor waives or renounces the benefit or protection of all exemption laws; and then the execution may be satisfied from any of his property that the sheriff can find.

(156.)

#### FORM OF A JUDGMENT NOTE WITH WAIVER.

§	(Time.)	after date, for value received,	18
promise to pay	or bearer,	dollars, with interest,	
and without defalcation or stay of execution. And do hereby			
confess judgment for the above sum, with interest and costs of suit, a			
release of all errors, and waiver of all rights to inquisition and appeal, and			
to the benefit of all laws exempting real or personal property from levy			
and sale.			

(Signature.)

Sometimes, in addition to the above, the same note has below it a power of attorney, authorizing the attorney whose name is put into the blank left for that purpose to appear in court for the promisor, and confess judgment. Sometimes the power is given to an attorney whom the parties agree upon, and then no other attorney can confess the judgment. It is, however, far more usual, and better, to insert the name of an attorney, and add, as in the following form, "or any attorney of any court of record."

(157.)

## JUDGMENT NOTE WITH WAIVER, AND POWER OF ATTORNEY.

\$				186
	after date	the subscriber	of	
county of	State of	promise to pay to the		
National Bank of		or order	dollars, at their	
office, value received, with interest, at			per cent per annum	
after due.				

Due

KNOW ALL MEN BY THESE PRESENTS, That the subscriber  
justly indebted to the National Bank of  
upon a certain promissory note, bearing even date herewith,  
for the sum of dollars, with interest, at the rate of  
per cent per annum, after due, and due day after date.

Now, THEREFORE, In consideration of the premises do  
hereby make, constitute, and appoint or any attorney of any  
court of record, to be true and lawful attorney, irrevocably  
for and in name, place, and stead, to appear in  
any court of record, in term time or in vacation, in any of the States or  
Territories of the United States, at any time after the said note becomes  
due, to waive the service of process, and confess a judgment in favor of  
the said National Bank of or their assigns or as-  
signees, upon the said note for the above sum and interest thereon, to the  
day of the entry of the said judgment, together with costs, and twenty  
dollars, attorney's fees, and also to file a *cognovit* for the amount thereof,  
with an agreement therein that no writ of error or appeal shall be prose-  
cuted upon the judgment entered by virtue hereof, nor any bill in equity  
filed to interfere in any manner with the operation of said judgment, and  
to release all errors that may intervene in the entering up of said judg-  
ment, or issuing the execution thereon; and also to waive all benefit of  
advantage to which may be entitled by virtue of any home-  
stead or other exemption law, now, or hereafter in force, in this or any  
other State or Territory, where judgment may be entered by virtue hereof.

Hereby ratifying and confirming all that  
by virtue hereof.

said attorney may do

WITNESS

hand and seal, this

day of

A.D. 186

(Signature.) (Seal.)

In presence of

Sometimes the note is followed on the same paper by a power to confess judgment, and a waiver of all right of exemption; both the power and the waiver extending beyond the above-written note, and covering other notes and bonds and other evidence of debt.

(158.)

# JUDGMENT NOTE WITH FULLER WAIVER, AND POWER OF ATTORNEY.

\$

18

for value received,  
of the sum of

promise to pay to the order  
dollars, with interest, in (time).

(Signature.)

KNOW ALL MEN BY THESE PRESENTS, That whereas, the subscriber, now justly indebted to upon a certain promissory note, bearing even date herewith, for the sum of dollars, and cents, made payable to the order of the said and due and may from time to time hereafter become further or otherwise justly indebted to the said upon bonds, promissory notes, due bills, and other written evidences of debt, made, or to be made, indorsed or accepted by and held or owned by the said assignee or assignees hereof.

Now, THEREFORE, In consideration of the premises, and of the sum of one dollar to paid by the said the receipt whereof is hereby acknowledged, do hereby make, constitute, and appoint or any attorney of any court of record, to be true and lawful attorney, irrevocable, for and in name, place, and stead, to appear in and before any court of record, either in term time or in vacation, in any of the States or Territories of the United States, at any time after the of said note, or of any such bond, promissory note, due bill, or other written evidence of debt, so already made or to be made, indorsed, or accepted by as aforesaid, respectively, to waive service of process, and confess a judgment in favor of the said executors, administrators, assignee, or assignees, or the legal holder or holders of said note or of any one or more of such bonds, promissory notes, due bills, or other written evidences of debt, as aforesaid, for so much money as shall by the same appear to be due or owing thereon, with interest thereon according to the tenor and effect thereof respectively, together with costs; also, for dollars, attorney's fees, to be added to the amount due or owing on entering up



**A principal is responsible for the acts of his agent, not only when** he has actually given full authority to the agent thus to represent and act for him, but when he has, by his words, or his acts, or both, caused or permitted the person with whom the agent deals to believe him to be clothed with his authority. And a man may be thus held as a principal, either because he has in some way authorized *all* persons to believe that he has constituted some other man his agent, or because he has authorized only the party dealing with the supposed agent to so believe. For all responsibility of a principal for the acts of an agent rests upon two grounds, which are commonly united, but either of which alone is sufficient: one, the giving of actual authority; the other, such appearing to give authority as justifies those who deal with the supposed agent in believing that this authority was given him.

**A general agent is one authorized to represent his principal in** all his business, or in all his business of a particular kind. A particular agent is one authorized to do only a specific thing or a few specified things. It is not always easy to discriminate between these; but it is often important, by reason of the rule, that the authority of a *general* agent is measured by the usual scope and character of the business he is empowered to transact. By appointing him to do that business, the principal is considered as saying to the world that his agent has all the authority necessary to the doing of it in the usual way. And if the agent transcends his actual authority, but does not go beyond the natural and usual scope of the business, the principal is bound, unless the party with whom the general agent dealt knew that the agent exceeded his authority. For if an agent does only what is natural and usual in transacting business for his principal, and yet goes beyond the limits prescribed by him, it is obvious that the principal must have put particular and unusual limitations to his authority; and these cannot affect the rights of a third party who deals with the agent in ignorance of these limitations. But, on the other hand, the rule is, that, if an agent who is specially authorized to do a specific thing exceeds his authority, the principal is not bound; because the party dealing with such agent must inquire for himself, and at his own peril, into the extent and limits of the authority given to the agent. Here, however, as before, if the party dealing with the agent, and inquiring, as he should, into his authority, has sufficient evidence of this authority furnished to him by the principal, and, in his dealings with the agent, acts within the limits of the authority thus proved, he cannot be affected by any reservations and limitations made secretly by the principal, and wholly unknown to the person dealing with the agent.



## SECTION II.

**HOW AUTHORITY MAY BE GIVEN TO AN AGENT.**

It may be given under seal, or in writing without seal, or orally; if given by a written instrument, this instrument is called a power of attorney, of which we shall give various forms at the close of this chapter. An oral or written appointment not under seal authorizes the agent to make a written contract, but not to execute instruments under seal. But an instrument under seal, signed and sealed in the principal's presence, and by his request and authority, will be regarded as the principal's deed, made by himself. One employed by another to act for him in the usual trade or business of the agent, as auctioneer, broker, or the like, acquires thereby authority to do all that is necessary or usual in that business. And if a person puts his goods into the custody of another whose ordinary and usual business it is to sell such goods, he authorizes the whole world to believe that this person has them for sale; and any person buying them honestly, in this belief, would hold them.

Therefore, if fraudulent by-bidding be procured or permitted by the auctioneer, even without the knowledge of the owner of the goods, the owner is answerable for this fraud of his agent, and the buyer has a right to refuse to take the goods. So neither party is bound until the agreement of sale is completed. Therefore the auctioneer may withdraw any article, and a bidder may withdraw any bid, until the article is "knocked down," but not afterwards; for then the sale is completed, and the property in (or ownership of) the article passes to the buyer.

If one is repeatedly employed to do certain things, — as a wife or a son to sign bills or receipts; or a domestic servant to make purchases; or a merchant or broker to sign policies, and the like, — in all these cases, one dealing with the person thus usually employed is justified in believing him authorized to do those things with the assent and approbation of his employer, and in the same way in which he has done them; but not in any other way. Thus, if a servant is usually employed to buy, but always for cash, this implies no authority to buy on credit.

An agency may be confirmed and established, and in fact created, by a subsequent adoption and ratification; and a ratification relates back to the original transaction. A corporation is bound by the ratification of an agent's acts, in the same manner as an individual would be. But no ratification is effectual to bind the principal, unless made by the principal with a knowledge of all the material

facts. And there can be ratification only where the act is done by one purporting to be an agent, or by an assumed authority. Generally, one who receives and holds a beneficial result of the act of another as his agent, is not permitted to deny such agency; and in some cases this is extended even to acts of such agent under seal.

**Thus, if an agent sell under seal property of a supposed principal,** an individual or a corporation, and receive payment, and hand this over to the principal, if the principal could show that the agent had no authority, he might avoid the sale, and recover the property; but he could not do this and also hold the money paid for it. And if one, knowing that another has acted as his agent, does not disavow the authority as soon as he conveniently can, but lies by and permits a person to go on and deal with the supposed agent, or to lose an opportunity of indemnifying himself, this is an adoption and confirmation of the acts of the agent. Nor can a supposed principal adopt a part for his own benefit, and repudiate the rest of the supposed agency; he must adopt the whole, or none.

**If an agent makes a sale, and his principal ratifies the sale,** he thereby ratifies the agent's representations made at the time of the sale and in relation to it, and is bound by them.

**The whole subject of mercantile agency is influenced and governed by mercantile usage.** Thus, as to the difference between factors and brokers, the law adopts a distinction usual among merchants, although it may not always be regarded by them. A factor is a mercantile agent for sales and purchases, who has possession of the goods; a broker is such agent, but without possession of the goods. Hence, a factor may act for his principal, and yet in his own name, because the actual owner, by delivering to him the goods, gives to him the appearance of an owner; but a broker must act only in the name of his principal.

**A purchaser of goods from a factor may set off against the price a debt due from the factor,** unless he buys the goods knowing that they are another's; not so, if the purchaser buy from a broker. Again, a factor has a lien on the goods for his claims against his principal; but a broker generally has not.

**One may be a factor as to all rights and duties, who is called a broker;** as an exchange-broker, who has notes for sale on discount, certificates of stock, &c., delivered into his possession; and such broker, being actually a factor, would have a lien on the policies of insurance or other documents held by him for his commissions and charges about those documents.

**A cashier of a bank, or other official person, may be an agent for those whose officer he is, or for others who employ him.** He has,

without special gift, all the authority necessary or usual in the transaction of his business. But he cannot bind his employers by any unusual or illegal contract made with their customers. The same law, and the same qualifications, apply to the case of officers of railroad companies, or other corporations. Their acts bind their employers or companies, so far as they have authorized those acts, or have justified those who dealt with the officers in believing that the officers possessed such authority; but no further.

Nor would the acts or permissions of such officer have any validity if they violate his official duties, and are certainly and obviously beyond his power, even if sanctioned by his directors; as if the cashier of a bank permitted overdrawing, or the like. And all parties who deal with such agent in such a transaction would be unable to hold the principal; for the law would consider them as knowing that the officer could have no right to do such things.

Therefore, the general agent of a corporation, clothed with a certain power by the charter or the lawful acts of the corporation, may use that power for an authorized, or even a prohibited purpose, in his dealings with an innocent third party, and render the corporation liable for his acts, if they be really within the power given him, or seem to be within it, by the fault or act of the corporation; but not otherwise. Thus, a treasurer of a corporation has no power to release a claim which belongs to the corporation.

### SECTION III.

#### EXTENT AND DURATION OF AUTHORITY.

A general authority may continue to bind a principal after its actual revocation, if the agency were known, and the revocation be wholly unknown to the party dealing with the agent, without that party's fault.

An authority to sell implies an authority to sell on credit, if that be usual, otherwise not; and if an agent sells on credit without any authority, or by exceeding his authority, the principal may claim his goods from the purchaser, or hold the agent responsible for their price. Neither an auctioneer, nor a broker employed to sell, has any right to sell on credit, unless this authority is given him expressly, or by some known and established usage. And the agent is generally responsible if he mixes the goods of his principal with his own, in such a manner as to confuse them together, or takes a note payable to himself, unless this be authorized by the usage of the trade.

If the agent (or factor) takes a note payable to himself, and becomes bankrupt, such note belongs to his principal, and not to the agent's assignees.

A power to sell gives a power to warrant, where there is a distinct usage of making such sales with warranty, and the want of authority to warrant is unknown to the purchaser, without his fault, and not otherwise. Thus it has been held that an authority to sell a horse implies an authority to sell with warranty, because horses are usually sold with warranty. A general authority to sell goods carries with it an authority to sell by sample. General authority to transact business, or even to receive and discharge debts, does not enable an agent to accept or indorse bills or notes, so as to charge his principal. Even special authorities to indorse are construed strictly. But this authority may be implied from the previous usage of the agent, recognized and sanctioned by the principal. Where a confidential clerk was accustomed to draw bills for his employer, and this employer had authorized him in one instance to indorse, and on two other occasions had received money obtained by his indorsement of his employer's name, the court held that a jury might consider the clerk authorized generally to indorse for his employer. An agent to receive cash has no authority to take bills or notes, except bank-notes.

If an agent sells, and makes a material representation which he believes to be true, and the principal knows it to be false and does not correct it, this is the fraud of the principal and avoids the sale.

If an agency be justly implied from general employment, it may continue so far as to bind the principal after his withdrawal of the authority, if that withdrawal be not made known in such way as is usual or proper to all who deal with the agent as such.

Revocation, generally, is always in the power and at the will of the principal. His death operates of itself a revocation. But the death of an agent does not revoke the authority of a sub-agent appointed by the agent under an authority given him by the principal. If the power be coupled with an interest, — as where one gives a person power to sell goods and apply the money for his own benefit, or the like, — or if it is given for a valuable consideration, and the continuance of the power is requisite to make the interest available, then it cannot be revoked at the pleasure of the principal. Marriage of a woman revokes a revocable authority given by her while single.

If an agent to whom commercial paper is given for collection be negligent or mistaken about it, and so in fault towards his principal, the measure of his responsibility is the damage actually sustained by his principal.

If a bank receive notes or bills for collection, although charging no commission, the possible use of the money is consideration enough to make them liable as agents having compensation; that is, liable for any want of due and legal diligence and care. But if the bank exercise proper skill and care in the choice of a collecting agent, or of a notary, or other person or officer, to do what may be necessary in relation to the paper committed to them, the bank is not liable for *his* want of care or skill.

In general, an exigency, or even necessity, which would make an extension of the power of an agent very useful to his employer, will not give that extension. A master of a ship, however, may sell it, in case of strict necessity, or pledge it by bottomry, to raise money. But this is a peculiar effect of the law-merchant, arising only from necessity.

#### SECTION IV.

##### THE EXECUTION OF AUTHORITY.

Generally, an authority must be conformed to with great strictness and accuracy, otherwise the principal will not be bound, although the agent may be bound personally. But the strictness formerly required is now abated considerably; and, whatever be the form or manner of the signature of a simple contract, it will be held to bind the principal, if that were the certain and obvious intent. In the case of sealed instruments, the ancient severity is more strictly maintained.

That the authority must be conformed to with strict accuracy, in all matters of substance, is quite certain; but the whole instrument will be considered, in order to ascertain the intention of the parties and the extent of authority. A power given to two cannot be executed by one; but some exception to the rule as to joint power exists in the case of public agencies, and also in many commercial transactions. Thus, either of two factors, whether partners or not, may sell goods consigned to both. And where there are joint agents, whether partners or not, notice to one is notice to both.

In commercial matters, usage, or the reason of the thing, may sometimes seem to add to an authority; so far, at least, as is requisite for the full discharge of the duty committed to the agent in the best and most complete manner. Thus it is held that an agent, to get a bill discounted, may indorse it in the name of his principal, unless he is expressly forbidden to indorse. So a broker, employed to procure insurance, may adjust a loss under the same; but he cannot give up any advantages, rights, or securities of the assured, by compromise or otherwise, without special authority.

## SECTION V.

## LIABILITY OF AN AGENT.

Generally, an agent makes himself liable by his express agreement, or by transcending his authority, or by a material departure from it, or by concealing his character as agent, or by such conduct as renders his principal irresponsible, or by his own bad faith. If he describes himself as agent for some unnamed principal, he is not liable, unless he is proved to be the real principal. If an agent execute an instrument, the language of which would hold him personally, he cannot exonerate himself by showing that, in fact, he signed it as agent, and that this was known to the other party; because this would be to vary the terms of a written contract by evidence, which is not permitted, as we have before stated.

A party with whom an agent deals as agent cannot hold him personally, on the ground that he transcended or departed from his authority, if that party knew at the time that the agent did so. If he exceeds his authority, he is liable on the whole contract, although a part of it is within his authority. One who, having no authority, acts as agent, is personally responsible. But if an agent transcends his authority through an ignorance of its limits, which is actual and honest, and is not imputable to his own neglect of the means of knowledge, he would not be held, unless an innocent party dealing with him as agent would suffer loss if he were not held.

## SECTION VI.

## RIGHTS OF ACTION GROWING OUT OF AGENCY.

If an agent intrusted with goods sell the same without authority, the principal may affirm the sale, and sue the buyer for the price, or he may disaffirm the sale, and recover the goods from the buyer.

In case of a simple contract, that is, a contract not under seal, an undisclosed principal may show that the nominal party was actually his agent, and thus make himself actually a party to the contract, and sue upon it; but if the other party has previously in good faith settled with the supposed agent, or paid him any thing in cash or by charge, or in account, this other party must not lose by the coming forward of the principal. So, too, an undisclosed principal, when discovered, may be made liable on such contract; but would be protected, if his accounts or relations with his agent had been in the

mean time changed in good faith, so as to make it detrimental to him to be held liable. If one sells to an agent, knowing him to be an agent, and knowing who is his principal, and elects to charge the goods to the agent alone, he cannot afterwards transfer the charge to the principal.

**Notice to an agent, before the transaction goes so far as to render the notice useless, is notice to the principal.** And knowledge obtained by an agent in the course of the transaction itself is the same thing as knowledge of the principal. Notice to an officer or member of a corporation is notice to that corporation, if the officer or member, by appointment, or by usage, had authority to receive it for the corporation; but notice to or knowledge of any member is not necessarily notice to or knowledge of a corporation.

## SECTION VII.

### HOW A PRINCIPAL IS AFFECTED BY THE ACTS OF HIS AGENT.

**If an agent makes a fraudulent representation, a principal** would be liable for resulting injury, although personally ignorant and innocent of the wrong; nor can he take any benefit therefrom. A principal cannot, of course, restrict his liability by calling himself an agent, although this is sometimes attempted.

**Payment to an agent of money due to the principal binds the principal** only when it is made to the agent in the regular course of business. Payment to a sub-agent appointed by the agent, but whose appointment is not authorized by the principal, binds the agent, and renders him liable to the principal for any loss of the money in the sub-agent's hands. Where a legacy was left to a tradesman, and the executors paid it to a shopman who was in the habit of receiving daily payments, this was held not a sufficient payment to discharge the executors. And, generally, a shopman authorized to receive money at the counter, or any person authorized to receive money at any particular place or in any particular way, or for any particular purpose, is not thereby authorized to receive it in any other place or in any other way, or for any other purpose. Nor is the principal bound, if the agent be authorized to receive the money, but, instead of actually receiving it, discharge a debt due from himself to the payer, and then give a receipt as for money paid to his principal, unless it can be shown that he has special authority to receive payment in this way, or that such payment is justified, by known usage.

In general, although a principal may be responsible for the deliberate fraud of his agent in the execution of his employment, he is not responsible for his *criminal* acts, unless he expressly commanded them. There is, however, a class of cases in which the principal has intrusted property to his agent, and the agent has used it illegally; and this act of the agent is evidence, which, if unexplained and unanswered, suffices to render the principal liable criminally, without proof of his direct participation in the act itself. The smuggling of goods, the issue of libellous publications, and the sale of intoxicating liquors by agents, belong to this class.

## SECTION VIII.

### MUTUAL RIGHTS AND DUTIES OF PRINCIPAL AND AGENT.

An agent cannot depart from his instructions without making himself liable to his principal for the consequences. In determining the purport or extent of his instructions, custom and usage in like cases will often have great influence; because, on the one hand, the agent is entitled to all the advantages which a known and established usage would give him, and, on the other, the principal has a right to expect that his agent will conduct himself according to such usage. But usage is never permitted to prevail over express instructions. A principal who accepts the benefit of an act done by his agent beyond or aside from his instructions, discharges the agent from responsibility therefor. And any unnecessary delay in renouncing the transaction, or any endeavor to wait and make a profit out of it, is an acceptance of the act. But if the agent has bought goods for his principal without authority, the latter may renounce the purchase, and, nevertheless, hold the goods as security for his money, if that has been advanced on them.

In general, every agent is entitled to indemnity from his principal, when acting in obedience to his lawful orders, or when he, in conformity with his instructions, does an act which is not wrong in itself, and which he is induced by his principal to suppose right at that time.

An attorney or agent cannot appoint a sub-attorney or agent, unless authorized to do so expressly, or by a certain usage, or by the obvious reason and necessity of the case. Thus, a consignee or factor for the sale of merchandise may employ a broker to sell, when this is the usual course of business. A sub-agent, appointed without such authority, is only the agent of the agent, and not the agent of the principal, unless his appointment is in some way authorized or confirmed and ratified by the principal.



**An agent is bound to use, in the affairs of his principal, all that care and skill which a reasonable man would use in his own. And he is also bound to the utmost good faith. Where, however, an agent acts gratuitously, without an agreement for compensation, or any legal right to compensation growing out of his services, he will not be held responsible for other than gross negligence. But a strictly gratuitous agent will be held responsible for property intrusted to him, if it be lost or injured by his gross negligence.**

**For any breach of duty an agent is responsible for the whole injury thereby sustained by his principal; and, generally, a verdict against the principal for misconduct of the agent measures the claim of the principal over against the agent. The loss must be capable of being made certain and definite; and then the agent is responsible if it could not have happened but for his misconduct, although not immediately caused by it. Thus, where an insurance-broker was directed to effect insurance on goods "from Gibraltar to Dublin," and caused the policy to be made "beginning from the lading of the goods on board," and they were laden on board at Malaga, and went thence to Gibraltar, and sailed for Dublin, and were lost on the voyage, so that the policy did not cover them because they were not laden at Gibraltar; — this was held to be gross negligence on his part, and he was held responsible for the value of the goods.**

**If any agent embezzles his employer's property, it is quite clear that the employer may reclaim it whenever and wherever he can distinctly trace and identify it. But if it be blended indistinguishably with the agent's own goods, and the agent die or become insolvent, the principal can claim only as a common creditor, as against other creditors; but as against the factor or agent himself, the whole belongs in law to the principal; because the factor or agent had no right thus to mix up the property of another with his own, and if he chooses to do so, he must lose all of his own property that cannot be separated from that which is not his own.**

**An agent employed to sell property cannot buy it himself; nor, if employed to buy, can he buy of himself, unless expressly authorized to do so. Nor can a trustee purchase the property he holds in trust for another. But the other party may ratify and confirm such sale or purchase by his agent; and he will do this by accepting the proceeds and delaying any objection for a long time after the wrongful act is made known to him. And if a trustee or agent to sell property buys it, not in his own name, but through somebody else, the sale is voidable.**

Among the obvious duties of all agents is that of keeping an exact account of their doings, and particularly of all pecuniary transactions. After a reasonable time has elapsed, the court will presume that such an account was rendered, accepted, and settled; otherwise, every agent might always remain liable to be called upon for such account. Moreover, he is liable not only for the balances in his hands, but for interest; or even, where there has been a long delay to his own profit, he might be liable for compound interest, on the same ground on which it has been charged in similar cases against executors, trustees, and guardians. No interest whatever would be charged, if such were the intention of the parties, or the effect of the bargain between them; and this intention may be inferred either from direct or circumstantial evidence, — as the nature of the transaction, or the fact that the principal knew that the money lay useless in the agent's hands, and made no objection or claim.

The general rule is, that a principal may revoke his agency, and an agent may throw up the agency at pleasure. But neither would be permitted to exercise this power in an unfair and injurious manner which circumstances do not require or justify, without being responsible to the other party for any damages caused by his wrongful act.

Insanity revokes authority, especially if legally ascertained. But if the principal, when sane, gave an authority to his agent, and a third party acts with the agent in the belief of his authority, but after the insanity of the principal has revoked it, the insanity not being known to this third party, this revocation will not be permitted to take effect to the injury of this third party.

## SECTION IX.

### FACTORS AND BROKERS.

All agents who sell goods for their principals, and guarantee the price, are said in Europe to act under a *del credere commission*. In this country, this phrase is seldom used, nor is such guaranty usually given, except by commission-merchants. Indeed, the word "factor" is not commonly used in this country, except among lawyers, the common term being "commission-merchants;" and they may or may not give a guaranty. Where a guaranty is given, the factor is so far a surety, that his employers must first have recourse to the principal debtor. Still his promise is not "a promise to pay the debt of another," within the statute of frauds." (See Section 2 of Chapter XV.) Nor does he guarantee

the safe arrival of the money received by him in payment of the goods, and transmitted to his employer, but he must use proper caution in sending it. And if it is agreed that he shall guaranty the remittance, and charge a commission for so doing, he is liable, although he does not charge the commission. If he takes a note from the purchaser, this note is his employer's; and if he takes depreciated or bad paper, he must make it good.

**A broker or factor is bound to the care and skill properly belonging to the business which he undertakes, and is responsible for the want of it.**

**A factor intrusted with goods may pledge them for advances to his principal, or for advances to himself to the extent of his lien for charges and commissions. And his power to pledge them, which grows out of the law-merchant, has been much enlarged by statute in many of our States.**

The mere wishes or intimations of his employer, if sufficiently distinct, have the force of instructions. Thus, in New York, a principal wrote to his factor, stating that he thought there was a short supply of the goods he had consigned, and giving facts on which his opinion was founded, and concluded, "I have thought it best for you to take my pork out of the market for the present, as thirty days will make an important change in the value of the article." This was considered by the court to be a distinct instruction, binding upon the factor; and he was therefore held liable for the loss caused by selling the pork within the thirty days.

**All instructions the agent or factor must obey; but may still, as we have already stated, depart from their letter, if in good faith, and for the certain benefit of his employer, in an unforeseen exigency. Having possession of the goods, he may insure them; but is not bound to do so, nor even to advise insurance, unless requested, or unless a distinct usage makes this his duty. He has much discretion as to the time, terms, and manner of a sale, but must use this discretion in good faith. For a sale which is precipitated by him without reason and injuriously is voidable by his principal, as unauthorized. If he send goods to his principal without order, or contrary to his duty, the principal may return them, or, acting in good faith and for the benefit of the factor, may sell them as the factor's goods.**

**Although a factor charges no guaranty commission, he is liable to his principal for his own default; so he is if he sells on credit, and, when it expires, takes a note to himself: but if he takes at the time of the sale a negotiable note from a party in fair credit, and the note is afterward dishonored, this is the loss of his employer, unless the factor has guaranteed it.**

If he sells the goods of many owners to one purchaser, taking a note for the whole to himself, and gets it discounted for his own use or accommodation, he is then liable without any guaranty for the payment of that note. So he is if he gets discounted for his own use a note taken wholly for his principal's goods. But he may discount the note to reimburse himself for advances, without making himself liable. If he sends his own note for the price to his employer, he must pay it.

As a factor has possession of the goods, he may use his own name in all his transactions, even in suits at law; but a broker can buy, sell, receipt, &c., only in the name of his employer. So, a factor has a lien on the goods in his hands for his advances, his expenses, and his commissions, and for the balance of his general account. And the factor may sell from time to time enough to cover his advances, unless there be something in his employment or in his instructions from which it may be inferred that he had agreed not to do so. But a broker, having no possession, has no lien. The broker may act for both parties, and often does so. But, from the nature of his employment, a factor should act only for the party employing him.

A broker has no authority to receive payment for the goods he sells, unless that authority be given him, expressly or by usage. Nor will payment to a factor discharge a debtor who has received notice from the principal not to make such payment.

Generally neither factor nor broker can claim their commissions until their whole service be performed, and in good faith, and with proper skill, care, and industry; and their negligence may be given in evidence either to lessen their compensation or commissions, or to bar them altogether. But if the service begins, and is interrupted wholly without their fault, they may claim a proportionate compensation. If either bargains to give his whole time to his employer, he will not be permitted to derive any compensation for services rendered to other persons. Nor can either have any valid claim against any one for illegal services, or those which violate morality or public policy.

A principal cannot revoke an authority given to a factor after advances made by the factor, without repaying or securing the factor.

The distinction between a foreign and a domestic factor is quite important, as they have quite different rights, duties, and powers by the law-merchant generally. A domestic factor is one who is employed and acts in the same country with his principal. A foreign factor is one employed by a principal who lives in a different country; and a foreign factor is as to third parties — for

most purposes and under most circumstances — a principal. Thus, third parties cannot sue the principal, because they are supposed to contract with the factor alone, and on his credit, although the principal may sue them; and a foreign factor is personally liable, although he fully disclose his agency, and his principal is known.

The following forms of powers of attorney are those most frequently required; and from them, by suitable alterations, powers of attorney may be framed for any purpose.

#### FORMS ANNEXED TO THIS CHAPTER.

- (159.) A power of attorney.
- (160.) A power of substitution.
- (161.) A power of attorney in a shorter form.
- (162.) A full power of attorney to demand and recover debts.
- (163.) A power of attorney to sell and deliver chattels.
- (164.) A power of attorney given by seller to buyer.
- (165.) A power of attorney to sell shares of stock, with appointment by attorney of a substitute.
- (166.) A power of attorney to subscribe for stock.
- (167.) A proxy, or power of attorney to vote.
- (168.) A proxy, revoking all former proxies.
- (169.) A proxy, with affidavit of ownership, in use in New York.
- (170.) A power to receive a dividend.

#### (159.)

##### POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, That I (*the name of the principal or party appointing*), of (*residence*), have constituted, ordained, and made, and in my stead and place put, and by these presents do constitute, ordain, and make, and in my stead and place put (*name of attorney*), to be my true, sufficient, and lawful attorney, for me and in my name and stead to (*here set forth the purposes for which the power is given*).

Giving and hereby granting unto him, the said attorney, full power and authority in and about the premises; and to use all due means, course, and process in law for the full, effectual, and complete execution of the business afore described; and in my name to make and execute due acquittance and discharge; and for the premises to appear, and the person of me the constituent to represent, before any governor, judges, justices, officers, and ministers of the law whatsoever, in any court or courts of judicature, and there on my behalf to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also to submit any matter in dispute, respecting the premises, to arbitration or otherwise; with full power to make and substitute, for the purposes aforesaid,

one or more attorneys, under him, my said attorney, and the same again at pleasure to revoke. And generally to say, do, act, transact, determine, accomplish, and finish all matters and things whatsoever relating to the premises, as fully, amply and effectually, to all intents and purposes, as I, the said constituent, if present, ought or might personally, although the matter should require more special authority than is herein comprised, I, the said constituent, ratifying, allowing, and holding firm and valid all whatsoever my said attorney or his substitutes shall lawfully do, or cause to be done, in and about the premises, by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this  
day of                      in the year of our Lord eighteen hundred and sixty-

(Signature.)      (Seal.)

Signed, sealed, and delivered in presence of us,

Sometimes a power of attorney is given without any power of substitution. This may be by inadvertence, or because it was not intended that the attorney should substitute anybody in his place. Afterwards, it is desired to give him this power to substitute others. And this may be done by a separate instrument, as follows:—

(160.)

#### POWER OF SUBSTITUTION.

KNOW ALL MEN BY THESE PRESENTS, That I,                      by virtue of the power and authority to me given, in and by the letter of attorney of (the principal), which is hereunto annexed (or described without being annexed), do make, substitute, and appoint (name of substitute), as well for me as the true and lawful attorney and substitute of the said constituent named in the said letter of attorney, to do, execute, and perform all and every thing requisite and necessary to be done, as fully, to all intents and purposes, as the said constituent or I myself could do if personally present; hereby ratifying and confirming all that the said attorney and substitute hereby made shall do in the premises by virtue hereof and of the said letter of attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the  
day of                      in the year of our Lord one thousand eight hundred and

(Signature.)      (Seal.)

Executed and delivered in the presence of

(161.)

#### POWER OF ATTORNEY IN A SHORTER FORM.

KNOW ALL MEN BY THESE PRESENTS, That I (name of principal), have made, constituted, and appointed, and by these presents do make, consti-



IN WITNESS WHEREOF, I have hereunto set my hand and seal, this  
 day of                      in the year of our Lord one thousand eight  
 hundred and

(Signature.) (Seal.)

Signed, sealed, and delivered in presence of us,

(163.)

#### POWER OF ATTORNEY TO SELL AND DELIVER CHATTELS.

KNOW ALL MEN BY THESE PRESENTS, That I, the undersigned, for value received, do hereby irrevocably constitute and appoint                      to be my true and lawful attorney, for me and in my name and behalf to sell, transfer, and deliver unto                      or any other person or persons (*here describe the things to be sold*). And further, one or more persons under him to substitute with like power.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this  
 day of                      18

(Witnesses.)

(Signature.) (Seal.)

(164.)

#### POWER OF ATTORNEY GIVEN BY SELLER TO BUYER.

KNOW ALL MEN BY THESE PRESENTS, That I                      for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto (*name of the buyer*), the following articles, namely (*describe the articles*); and I do hereby constitute and appoint the said (*the buyer*) my true and lawful attorney irrevocable, for me and in my name and stead, but to my use, to sell, assign, transfer, and set over all or any part of the said (*the goods*), and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney or his substitute or substitutes shall lawfully do by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the  
 day of                      one thousand eight hundred and

(Signature.) (Seal.)

Signed, sealed, and delivered in presence of

(165.)

#### POWER OF ATTORNEY TO SELL SHARES OF STOCK, WITH APPOINTMENT BY ATTORNEY OF SUBSTITUTE.

KNOW ALL MEN BY THESE PRESENTS, That, for value received, I (*name of the principal*), of                      do hereby make, constitute, and appoint irrevocably,                      my true and lawful attorney (with power of sub-



stitution), for and in my name and on my behalf, to sell, assign, and transfer unto (*name of buyer*), share now standing in my name in the capital or joint stock of the                      And my said attorney is hereby fully empowered to make and pass all necessary acts for the said assignment and transfer.

WITNESS my hand and seal,                      186  
(Signature.)      (Seal.)  
Signed, sealed, and delivered in the presence of

FOR VALUE RECEIVED, I appoint, irrevocably (*name of the substitute*), as my substitute, with all the powers above given to me.

WITNESS my hand and seal,                      186  
(Signature.)      (Seal.)  
Signed, sealed, and delivered in the presence of

(166.)

#### POWER OF ATTORNEY TO SUBSCRIBE FOR STOCK.

KNOW ALL MEN BY THESE PRESENTS, That I, the undersigned, do hereby irrevocably constitute and appoint                      to be my true and lawful attorney, for me and in my name and behalf to subscribe for shares in the capital stock of the                      And further, one or more persons under him to substitute with like power.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this  
day of                      18  
(Witnesses present.)                      (Signature.)      (Seal.)

(167.)

#### PROXY, OR POWER OF ATTORNEY TO VOTE.

KNOW ALL MEN BY THESE PRESENTS, That I (*name of the principal*), of do hereby appoint                      to be my substitute and proxy for me and in my name and behalf to vote at any election of directors or other officers, and at any meeting of the stockholders of said company, as fully as I might or could were I personally present.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this  
day of                      18  
(Witnesses present.)                      (Signature.)      (Seal.)

(168.)

#### PROXY, REVOKING ALL PREVIOUS PROXIES.

KNOW ALL MEN BY THESE PRESENTS, That I, the undersigned, stockholder in the (*name of the company*), do hereby appoint                      my true and lawful attorney, with power of substitution, for me and in my name to vote at the meeting of the stockholders in said company, to be

held at \_\_\_\_\_ or at any adjournment thereof, with all the powers I should possess if personally present, hereby revoking all previous proxies.

18

(Witness.)

(Signature.)

(169.)

PROXY, WITH AFFIDAVIT OF OWNERSHIP, IN USE IN NEW YORK.

KNOW ALL MEN BY THESE PRESENTS, That I, \_\_\_\_\_ do hereby constitute and appoint \_\_\_\_\_ my attorney and agent, for me and in my name, place, and stead to vote as my proxy at any election of directors of the \_\_\_\_\_ according to the number of votes I should be entitled to vote if then personally present.

IN WITNESS WHEREOF, I have hereto set my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

(Signature.) (Seal.)

Signed, sealed, and delivered in presence of \_\_\_\_\_

I do swear (*or affirm*) that the shares on which my attorney and agent in the above proxy is authorized to vote do not belong, and are not hypothecated, to the said company, and that they are not hypothecated or pledged to any other corporation or person whatever; that such shares have not been transferred to me for the purpose of enabling me to vote thereon at the ensuing election, and that I have not contracted to sell or transfer them upon any condition, agreement, or understanding in relation to my manner of voting at the said election.

(Signature.)

SWORN TO THIS \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, before me,

(Signature.)

(170.)

POWER TO RECEIVE DIVIDEND.

KNOW ALL MEN BY THESE PRESENTS, That I, \_\_\_\_\_ of \_\_\_\_\_ do authorize, constitute, and appoint \_\_\_\_\_ to receive from the (*name of the company*) the dividend now due to me on all stock standing to my name on the books of the said company, and receipt for the same; hereby ratifying and confirming all that may lawfully be done in the premises by virtue hereof.

WITNESS my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

(Signature.) (Seal.)

Signed, sealed, and delivered in the presence of \_\_\_\_\_

## CHAPTER XX.

## PARTNERSHIP.

## SECTION I.

## WHAT A PARTNERSHIP IS.

When two or more persons combine their property, labor, or skill, for the transaction of business for their common profit, they enter into partnership. Sometimes the word "firm" is used as synonymous with partnership; sometimes, however, it means only the copartnership name.

A single joint transaction, out of which, considered by itself, neither profit nor loss arises, will not create a partnership. If a joint purchase be made, and each party then takes his distinct and several share of the goods, this is no partnership.

Any persons competent to transact business on their own account may enter into partnership for that purpose.

## SECTION II.

## HOW A PARTNERSHIP MAY BE FORMED.

No especial form or manner is necessary. It may be by oral agreement, or by a written agreement, which may have a seal or not. But the liability and authority of the partners begin with the *actual* formation of the partnership, and do not wait for the execution of any articles. In general, if there be an agreement to enter into business, or into some particular transaction, together, and share the profits and losses, this constitutes a partnership, which is just as extensive as the business proposed to be done, and not more so. The parties may agree to share the profits in what proportion they choose; but in the absence of any agreement, the law presumes equal shares.

They may agree as to any way of dividing the losses, or even that one or more partners alone shall sustain them all, without loss to the rest. And this agreement is valid as between themselves; but it will not protect those partners who were to sustain no loss from responsibility to third parties, unless the third parties knew of this agreement between the partners, and gave credit accordingly.

If A, B, & C, being partners, agree that A should not lose any thing by their business, and a person knowing this bargain dealt with the firm on the credit of B & C, he could not call on A. But an agreement exempting partners from loss generally, or from loss beyond the amount invested, will only operate between the partners, unless it can be shown that the third party not only knew the agreement, but contracted with the firm on the basis of this agreement. And, generally, stipulations in articles of copartnership limiting the power of a partner are not binding on third parties who are ignorant of them. Each partner is absolutely responsible to every creditor of the copartnership for the whole amount of the debt. And, if thereby obliged to suffer loss, his only remedy is against the other partners.

**Although partners may agree and provide as they will in their articles, a long neglect of these provisions will be regarded as a mutual waiver of them.**

**Persons may be liable as partners to third parties or strangers, who are not partners as between themselves.** Whether they are partners as to each other would generally be determined by the intention of the parties, as drawn from their contract, — whether oral or written, — under the ordinary rules of evidence and construction. But whether one is liable as a partner to a person who deals with the firm must depend in part upon his intention, but more upon his acts; for if by them he justifies those who deal with the firm in thinking him a partner in that business, he must bear the responsibility; as if he declare that he has a joint interest in the property, or conducts the business of the firm as a partner, accepting bills, or suffers his name to be used upon cards, or in advertisements, or on signs, or in any similar manner. The declarations or acts of one person cannot, however, make another person liable as partner, without co-operation or consent, by word or act, on his part. The rule is this: that one who thus holds himself out as a partner, when he really is not one, is responsible to a creditor who on these grounds believed him to be a partner; but not to one who knew nothing of the facts, or who, knowing them, knew also that this person was not a partner.

**A secret partner is one who is actually a partner by participation of profit, but is not avowed or known to be such; and a dormant partner is one who takes no share in the conduct or control of the business of the firm.** Both of these are liable to creditors (even if the creditors did not know them to be members of the firm), on the ground of their interest and participation in the profits, which constitute, with the property of the firm, the funds to which creditors may look for payment. **A nominal partner is one who holds**

himself out to the world as such, but is not so in fact. He is liable to creditors of the firm, on the ground that he justifies them in trusting the firm on his credit, and, indeed, invites them to do so, by declaring himself to be a partner.

The principal test of membership in a mercantile firm is said to be the participation in the profits. Thus, if one lend money to be used in a business, for which he is to receive a share in the profits, this would make him a partner; and if he is to receive lawful interest, and, in addition thereto, a share of the profits, this would generally make him liable as a partner to a creditor of the firm.

Sometimes a clerk or salesman, or a person otherwise employed for the firm, receives a share of the profits instead of wages. Formerly it was held, that if such person received any certain share, say "one-tenth part of the net annual profits," this made him liable as a partner; but if he received "a salary equal in amount to one-tenth of the net profits," this did not make him a partner. Now, the courts look more at the actual intention of the parties, and their actual ownership of an interest in the funds of the partnership, and are not governed by the mere phraseology used. If, in fact, he works for wages, although these wages are measured by the profits, he is no partner, and therefore not liable for the debts, as every partner is.

Hence, factors and brokers for a commission on the profits, masters of vessels who engage for a share of the profits, or sea men employed on shares in whale-ships, are none of them partners.

A partnership usually has but one business name; but there does not seem to be any legal objection to the use of two names, especially for distinct business transactions; as A B & Co. for general business, and the name of A C & Co. for the purpose of making or indorsing negotiable paper, or for carrying on some particular business.

### SECTION III.

#### HOW A PARTNERSHIP MAY BE DISSOLVED.

If the articles between the partners do not contain an agreement that the partnership shall continue for a specified time, it may be dissolved at the pleasure of either partner. But no partner can exercise this power wantonly and injuriously to the other partners, without making himself responsible for the damage he thus causes. If there be a provision that the partnership shall continue a certain time, this is binding.

If either partner were to undertake to assign his interest, for the purpose of withdrawing from the firm, against the will of the partners, without good reason, and in fraud of his express agreement, a court of equity would interfere and prevent him. For the assignment of a partner's interest, or of his share of the profits, operates at once a dissolution of the partnership.

Such assignment may transfer to the assignee the whole interest of the assignor, but cannot give him a right to become a member of the firm. There seems to be an exception to this rule where the partnership is very numerous, and the manner of holding shares, by scrip or otherwise, indicates the original intention of making the shares transferable. Such a partnership is in effect a joint-stock company; which form of association is not very common here, because incorporation is better, and is easily obtained.

Death of a general or even of a special partner, operates a dissolution; and the personal representatives of the deceased do not take his place, unless there be in the articles an express provision that they shall. And such provisions are construed as giving the heirs or personal representatives the right of electing whether to become partners or not. If either party is unable to do his duty to the partnership, as by reason of insanity or a long imprisonment, or if he be guilty of material wrong-doing to the firm, — a court of equity will decree a dissolution. And if the original agreement were tainted with fraud, the court will declare it void from its beginning.

Whenever a court of equity decrees a dissolution of the partnership, it will also decree that an account be taken between the partners, if requested by either partner. And if necessary to do justice, it will decree a sale of the effects and a distribution of the proceeds, after a consideration of all the facts of the case and the whole condition of the firm. Such a decree may be made if a partner die or become bankrupt.

If the whole interest of a copartner is levied upon and sold on execution, this makes a dissolution, and the purchaser becomes, — like every other assignee of a partner, — not a partner, but only a tenant in common (that is, a joint owner) with the other partners; but if the levy and sale are only of a part, which may be severed from the rest, this may not operate a dissolution except as to that part.

If one partner retires, this operates in law a dissolution, and the remaining partners constitute in law a new firm, although in fact the remaining partners frequently continue and go on with their business, under the name of the old firm, with or without new members, as if it were the same firm.

The partner retiring should withdraw his name from the firm, and give notice, by the usual public advertisement, of his retirement, and also, by personal notice, by letter or otherwise, to all who usually do business with the firm; and after such notice he is not responsible, even if his name be retained in the firm by the other partners, if this is done without his consent. Nor is he responsible to any one who has in any way actual knowledge of his retirement.

A secret or unknown partner is not liable for a debt contracted after his retirement, although he give no notice; because his liability does not rest upon his giving his credit to the firm, but upon his being actually a partner.

#### SECTION IV.

##### THE PROPERTY OF THE PARTNERSHIP.

A partnership may hold real estate as well as personal estate, and a partnership may be formed to trade in land, or to cultivate land. But the rules of law in respect to real estate, as in relation to title, conveyance, dower, inheritance, and the like, make some difference. As far, however, as is compatible with these rules, it seems to be agreed that the real estate of the partnership is treated as if it were personal property, if it have been purchased with the partnership funds and for partnership purposes.

There is some difficulty in explaining this matter to those who are not acquainted with the peculiar law of real estate. Thus, no sale of land is valid except by deed: and only he who is thus a grantee under seal has a *legal* title. But a court of equity acknowledges and protects an *equitable* title in those who really possess all the interest in the land; as partners do who have paid for it, though it stands in the name of one partner only. But a court of equity cannot disregard the laws of conveyance and record, and therefore says that this one partner is the only *legal owner*, but that he owns the land as *trustee* for the firm. And then they compel him to sell it, or otherwise dispose of it, as the interests of the firm or of their creditors require.

So land thus purchased does not go to the heirs of the partner or partners in whose name it may stand, but is first subject to the debts of the firm, and then to the balance which may be due to either partner on winding up their affairs. But when these debts and claims are adjusted, any surplus of the real estate will then descend as real estate, and not as personal estate.

**Improvements made with partnership funds on the real estate of a partner will be regarded as partnership property.**

**The widow has her dower only after the above-mentioned debts and claims are adjusted.** And while the legal title is protected, as it must be for the purpose of conveyance and other similar purposes, the person holding this legal title will be held as a trustee for the partnership if the partnership be entitled to the beneficiary interest.

**But a purchaser of partnership real property, without notice or knowledge from a partner holding the same by a legal title, is protected against the other partners.** If, however, the purchaser has such knowledge, the conveyance may be avoided as fraudulent, or he may be held as trustee, the land being in his hands chargeable with the debts and claims of the partnership.

## SECTION V.

### THE AUTHORITY OF EACH PARTNER, AND THE JOINT LIABILITY OF THE PARTNERSHIP.

**This authority is very great, because the law-merchant makes each partner an agent of the whole partnership, with full power to bind all its members and all its property, in transactions which fall within the usual business of the firm ; as loans, borrowing, sales, even of the whole stock, pledges, mortgages, or assignments ; and this last extends even to an honest and prudent assignment of the whole stock and personal property to trustees to pay partnership debts. It extends to the making or indorsing negotiable paper ; and to transactions out of the usual business of the firm, if they arose from and were fairly connected with that business.**

**Nor is any party dealing with a partner affected by his want of good faith towards the partnership, unless he colluded with the partner, and participated in his want of good faith, by fraud or gross negligence.** But a holder of a note or bill signed or indorsed by a partner without authority has no claim against the partnership, if he knew or should have known the want of authority.

**A partner cannot, in general, bind the firm by a guaranty, a letter of credit, or a submission to arbitration, without authority, because these things do not belong generally and properly to commercial business.** But any thing so done by a partner may be adopted and ratified by the partnership, and then it has the same force as if originally authorized. And this ratification may be formal and express, or consist only of acts which distinctly imply it ; such as assenting to and acting with reference to it, and espe-



cially receiving and holding the beneficial results of it; as, for example, taking and holding money received from it.

**By the earlier and more stringent rules of law, a partner could not bind his copartners by an instrument under seal, unless he was himself authorized under seal; and their subsequent acknowledgment of his authority did not cure the defect.** Now, however, a partner may bind his firm by an instrument under seal, if it be in the name and for the use of the firm, and in the transaction of their usual business, provided the other copartners assent thereto before execution, or adopt and ratify the same afterwards; and they may assent or ratify by word as well as by seal; or provided he could have made the same conveyance, or done the same act effectually, without a deed. And a deed executed by one partner in the presence and with the assent of the other partners will bind them.

**A partnership has no seal at law, and can have none: only a person or a corporation can have a seal.** Instruments are sometimes executed, "A B & Co.," and a seal is affixed to the name. This is, strictly speaking, no seal at all; and if the instrument needs a seal to make it valid, as if it were a deed of land, it would, at law, be wholly void. But the courts in some of our States are somewhat lax on this subject, and might construe it as the seal of each one of the partners to give the instrument validity.

**A majority of the members cannot conclusively bind the minority, unless in reference to the internal concerns of the firm; as, for example, the salary or appointment of a clerk, the hiring or fitting-up of a counting-room, the manner of keeping accounts, and the like.** But one member may, so far as he is concerned, arrest a negotiation which was only begun, and prevent a bargain which would be binding on him, by giving notice to the third party of his dissent and refusal in season to enable him to decline the bargain without detriment.

**Partners must act as such, to bind each other.** Thus, if a partner makes a note, and signs it with his own name and his partner's name, as a joint and several note, it does not bind his partner, for the partnership gave him no authority to make such a note.

**If the name of one partner be also the name of the firm, — for John Smith and Henry Robinson may do business as partners under the name of "John Smith," — this name is not necessarily the name of the firm when used in a note or contract; and if the partner whose name is used carries on mercantile business for himself, it will not be supposed to be used as the name of the firm, without sufficient proof.**

**One who is not a partner will not have either the authority or the obligation of a partner cast upon him by an agreement of the**

firm to be governed by his advice. Nor shall one be charged as partner with others, unless he has incurred the liability by his own voluntary act.

The reception of a new member constitutes, in law, a new firm; but the new firm may recognize the old debts, as by express agreement, or paying interest, or other evidence of adoption, and then the new firm is jointly liable for the old debt. But there must be some fact from which the assent of the new member to this adoption of the old debt may be inferred, for his liability is not to be presumed.

A notice in legal proceedings, abandonment to insurers by one who was insured for himself and others, a notice to quit of one of joint lessors or lessees who are partners in trade, notice to one partner of the dishonor of a note or bill bearing the name of the firm, a release to one partner or by one partner, — will bind all the partners, and render them jointly liable. But a service of legal process should be made upon each partner personally.

If money be lent to a partner for partnership purposes, it creates a partnership debt; but not if lent expressly on the individual credit of the person borrowing; and not if the borrowing partner receives it to enable him to pay his contribution to the capital of the firm. Though the money be not used for the firm, if it was borrowed by one partner on the credit of the firm, in a manner and under circumstances justifying the lender in trusting to that credit, it creates a partnership debt. And if a partner uses funds in his hands as trustee, for partnership purposes, the firm are certainly jointly bound, if it was done with their knowledge. And if it was done without their knowledge, and the partners are distinctly and directly benefited by the transaction, and retain the benefit, they will be liable as if they had authorized it.

If in any case a person, knowing the existence of the firm, gave credit to a single partner only, then he can look only to that partner, and not to the firm, although the money was applied to and used for partnership purposes. But if the partner held himself out as borrowing for the firm, and the lender without any want of due care gave credit to the firm, and the transaction was a fair business transaction on the part of the lender, the firm will be liable, although the money is fraudulently appropriated by the partner to his own use.

In the absence of evidence showing to whom the credit was given, the fact that money lent to one partner was applied to the use of the firm, will make the firm liable for the payment; but not if the partner employed it as his contribution to increase the capital of the firm.

**If the purchaser of goods or the borrower of money have a dormant and secret partner, and the goods were bought or the money borrowed for partnership purposes, the seller or lender may look to both partners for payment, unless the seller or lender, knowing all the partners, gave credit to one only.**

**The firm is liable only to one who deals with a partner in good faith.** Thus, if one receives negotiable paper bearing the name of a firm, knowing that it is not in the business of the firm, and is given for no consideration received by the firm, he cannot hold the firm. And if a creditor of one partner receive for his separate debt a partnership security, this would be a fraud, unless the partner had, or was supposed by the creditor to have, the authority of the rest.

**If he supposed the partner had this authority, he cannot hold the partnership if the partner had not the authority, unless the partnership had caused him to believe it.** And if the partnership security be transferred for two considerations, one of which is private and fraudulent, and the other is joint and honest, the partnership is bound for so much of it as is not tainted with fraud, and only for that.

**The partnership may be liable for injury caused by the criminal or wrongful acts of a partner, if these were done in the transaction of partnership business, and if it was the partnership which gave to the wrong-doer the means and opportunity of doing the wrong.** But an illegal contract will not bind the copartners, for the parties entering into it must be presumed to know its illegality; and the law enforces no bargain that is contrary to law.

**The acknowledgment of one who had been a partner, after the dissolution of the partnership, may take the debt out of the statute of limitations as to him, but not so as to restore the liability of all the partners without their assent.**

## SECTION VI.

### REMEDIES OF PARTNERS AGAINST EACH OTHER.

**It is seldom that a partner can have a claim against another partner, *as such*, which can be examined and adjusted without an investigation into the accounts of the partnership, and, perhaps, a settlement of them.** Courts of law have ordinarily no adequate means of doing this; and therefore it is generally true that no partner can sue a copartner at law for any claim growing out of partnership transactions and involving partnership interests. But the objection to a suit at law between partners goes no further than

the reason of it; and, therefore, one may sue his copartner upon his debt or agreement to do any act which is not so far a partnership matter as to involve the partnership accounts.

**If the accounts are finally adjusted, either partner may sue for a balance; and so it would be if the accounts generally remained open, but a specific part of them were severed from the rest, and a balance found on that.** The rule is generally laid down, that an action cannot be sustained by a partner against a partner for a balance, unless there is an express promise to pay it. But such promise would be inferred in all cases in which an account had been taken, and a balance admitted to be due.

**In general, any action at law between partners can be maintained only when a rendering of judgment in this action will completely terminate all partnership matters, so that no further cause of action can grow out of them.**

**What a court of law cannot do as to actions between partners a court of equity can; and, generally, a court of equity has a full jurisdiction over all disputes and claims between partners, and may do whatever is necessary to settle them in conformity with justice.**

**A partner may sue his copartner for money advanced before the partnership was formed, although the loan was made to promote the partnership.** And for work done for the firm before he became a member of it, he may sue those who were members when he did the work. And he may sue a copartner on his note or bill, although the consideration was on partnership account; but, in general, no action at law can be maintained by a partner against his partners for work and labor performed, or money expended for the partnership.

**A partner who pays more than his proportion of a debt of the partnership cannot demand specific contribution from his copartners, but must charge his payment to the firm.** The reason is, that they may have claims against him on other accounts, and they must be all settled together to strike the balance.

**If one of a firm be a member also of another firm, the one firm cannot sue the other; for the same person cannot be plaintiff and defendant of record.** A cannot sue A; and therefore A, B, & C cannot sue C, D, & A. In all these cases an adequate remedy may be found in a court of equity.

**If a firm have a negotiable note which it cannot sue, because one of its own firm is liable upon it and must be made defendant, it can indorse the note over, and the indorsee may sue it in his own name, as we have before stated.** (See Section 6, Chapter XVIII.)

**The partners are entitled to perfect good faith from each copartner; and a court of equity will interfere to enforce this.** No part-

ner will be permitted to treat privately, and for his own benefit alone, for a renewal of a lease, or to transfer to himself of any benefit or interest properly belonging to the firm. And so careful is a court of equity in this respect, that it will not permit a copartner, by his private contract or arrangement, to subject himself to a bias or interest which might be injurious to the firm, and conflict with his duty to them, but will declare void any contract of this kind.

## SECTION VII.

### RIGHTS OF THE FIRM AGAINST THIRD PARTIES.

If a partner sells the goods of the firm in his own name, the firm may sue for the price. But the rights of one who deals in good faith with a copartner, as with him alone, are so far regarded, that he may set off any claim, or make use of any other defences against the suit of the firm, which he could have made had the person with whom he dealt sued alone.

Therefore, if A honestly bought goods of a firm from a partner whom he supposed to be sole owner of them, and paid him the price, the firm cannot recover this price from the buyer, although the seller sold the goods fraudulently, and cheated the firm out of the money, but must charge the price to the selling partner.

A guaranty to a copartner, if for the use and benefit of the firm, gives to them a right of action.

A new firm, created by some change in the membership of an old firm, is entitled to the benefit of a guaranty given to the old firm, even if sealed, only when it shall distinctly appear that the instrument was intended to have that effect, and extend to the new firm.

## SECTION VIII.

### RIGHTS OF CREDITORS IN RESPECT TO FUNDS.

The property of a partnership is bound to pay the partnership debts; and, therefore, a creditor of one copartner has no claim to the partnership funds until the partnership debts are paid. If there be then a surplus, he may have that copartner's interest therein, in payment of his private debt.

If a private creditor attaches partnership property, or in any way seeks to appropriate it to his private debt, the partnership debts being unpaid, he cannot hold it, either at law or in equity. Such attachment or appropriation is wholly subject to the paramount claims of the partnership creditors, and is wholly defeated by the

insolvency of the partnership, although the partnership creditors have not brought any actions for their debts.

Hence, if a creditor of A attaches his interest in the property of A, B, & Co., and a creditor of A, B, & Co. attaches the same property, the first attachment is postponed to the second; that is, it has no effect until the debt of the second creditor is fully satisfied, and then it is good for the surplus of property. If, however, one partner is dormant and unknown, the creditor of the other attaching the stock is not postponed to the creditor who discovers the dormant partner and sues him with the other, unless the first attaching creditor's claim has no reference to the partnership business, and that of the second attaching creditor has such reference.

The partnership creditors are restrained from appropriating the private property of the copartners until the claims of their private creditors are satisfied in courts of equity. And some recent adjudications indicate that the rule will become established at law.

I think the law ought to be, and that it is now tending to become, this. A partnership is a kind of body by itself, somewhat like a corporation. It has its own funds and its own debts. The individual members may also have each his own funds and his own debts. The funds of the partnership should first be applied to the debts of the partnership; and, if there be any surplus, the members have it, and their creditors get it. So the private funds of each member should first be applied exclusively to the payment of that person's private debts; and when they are wholly paid, the surplus should go to the partnership creditors, because each partner is responsible for the partnership debts. This rule prevails on the continent of Europe very generally.

It is now quite certain that the levy of a private creditor of one copartner upon partnership property can give him only what that copartner has; that is, not a separate personal possession of any part or share of the stock or property, but an undivided right or interest in the whole, subject to the payment of debts and the settlement of accounts, including also the right to demand an account.

As to how such levy and sale of the interest of one copartner shall be made by the sheriff, there is much diversity both of practice and of authority. Upon principle, we think the sheriff can neither seize nor transfer by sale either the whole stock or any specific portion of it. He should, we think, without any *actual seizure*, sell all the interest of the defendant partner in the stock and property of the partnership; much in the same way in which he would sell

his right to redeem a mortgage, or any other incorporeal right, subject to attachment. The purchaser would then have a right to demand an account and settlement, and a transfer to himself of any balance or property to which the copartner whom he sued would have been entitled.

Where the trustee process, or process of foreign attachment, is in use, the better way would be for the sheriff to return a general attachment of all the interest of the debtor in the partnership property, and summon the other partners as the trustees of the debtor.

It must be stated, however, that the rules of law in regard to the liability of partnership property for the private debts of partners, and as to how any such liability may be enforced, are, at present, somewhat obscure and uncertain.

## SECTION IX.

### THE EFFECTS OF DISSOLUTION.

If the dissolution is caused by the death of any partner, the whole property goes to the surviving partner or partners. They hold it, however, not as their own, but only for the purpose of settlement; and therefore they have, in relation to it, all the power which is necessary for that purpose, and no more. If they carry on the business with the partnership funds, they do so at their own risk; and the representatives of the deceased may require their share of the capital, and choose between calling on them, in addition, for interest, or for a share of the profits which the surviving partners have made.

The survivors are not partners but tenants in common (joint owners) with the representatives of the deceased of the stock or property in possession; and have all necessary rights to settle the affairs of the concern and pay its debts. After a dissolution, however caused, one who had been a partner has no authority to make new contracts in the name of the firm, and cannot make or indorse notes or bills with the name of the firm, even if he be expressly authorized to settle the affairs of the firm. There must be a distinct authority to sign for the others who were formerly partners. A parol authority will be sufficient, even if the general terms of the partnership had been reduced to writing.

It is common where a partnership is dissolved by mutual consent, to provide that some one of the partners shall settle up the affairs of the concern, collect and pay debts, and the like. But this will not prevent any person from paying to any partner a debt due

to the firm ; and, if such payment be made in good faith, the release or discharge of the partner is effectual.

If all the debts were assigned and transferred to any person, as his property, any debtor who had notice of this would be bound to make payment to this person alone ; and, if he paid anybody else, he would be obliged to pay the money over again.

It is frequently provided that one partner shall take all the property and pay all the debts ; but this agreement, though valid between the partners, has no effect upon the rights of third parties against the other partners ; for they have a valid claim against all the partners, of which they cannot be divested without their consent.

This consent of the creditor may be inferred, but not from slight evidence ; thus, not from receiving the single partner's note as a collateral security, nor from receiving interest from him on the joint debt, nor from a mere change in the head of the account, charging the single partner and not the firm. Still, as the creditor certainly can assent to this arrangement, and accept the indebtedness of one partner instead of that of the firm, so it must be equally clear that such assent and intention will bind him, if distinctly proved by circumstances or by any evidence.

## SECTION X.

### LIMITED PARTNERSHIP.

These have been introduced into some of our States, by statutes, which differ somewhat in their provisions. Generally, they require, first, one or more *general* partners, whose names shall be known ; secondly, *special* partners, who do not appear as members, nor possess the powers or discharge the duties of actual partners ; thirdly, the sum to be contributed by the special partners shall be actually paid in ; lastly, all these arrangements, with such other information as may be needed for the security of the public, must be verified under oath, signatures of all the parties, and acknowledgment before a magistrate, and correctly published. When these requisites are complied with, the special partners may lose all they have put in, but cannot be held to any further responsibility. But any neglect of them, or any material mistake in regard to them, even on the part of the printer of the advertisement, wholly destroys their effect ; and then the special partner is liable for the whole debt, precisely like a general partner.

In a New York case, the amount contributed by the special partner was, by mistake of the printer, stated at \$5,000, instead of



\$2,000, and it was held that the associates were liable as general partners, although the plaintiff did not show that he was actually misled by the error. In another New York case, it was held that an assignment of the partnership property, providing for the payment of a debt due to the special partner, ratably with the other creditors of the firm, or before all the other creditors are satisfied in full for their debts, is void as against the creditors; but it would be valid as against the assignor and those creditors who think proper to affirm it.

#### FORMS ANNEXED TO THIS CHAPTER.

- (171.) Articles of copartnership between two tradesmen.
- (172.) Shorter form of articles of copartnership.
- (173.) Certificate of a limited partnership, with acknowledgment and oath.

#### (171.)

##### ARTICLES OF COPARTNERSHIP BETWEEN TWO TRADESMEN.

ARTICLES OF AGREEMENT, Had, made, concluded, and agreed upon,  
 this                      day of                      A.D.                      between                      of  
                                  trader, and                      of                      trader.  
 First of all, the said                      and                      have agreed, and by  
 these presents do agree, to become copartners together in the art or trade  
 of                      and all things thereto belonging, and also in buying, sell-  
 ing, vending, and retailing all sorts of wares, goods, and commodities  
 belonging to the said trade of                      which said copartnership, it is  
 agreed, shall continue from                      for and during and unto the full  
 end and term of                      years, from thence next ensuing, and fully  
 to be complete and ended. And to that end and purpose he the said  
                                  hath the day of date of these presents, delivered in, as stock,  
 the sum of                      and he the said                      the sum of  
 to be used, laid out, and employed in common trade between them, for  
 the management of the said trade of                      to their utmost benefit  
 and advantage. And it is hereby agreed between the said parties, and the  
 said copartners, each for himself respectively, and for his own particular  
 part, and for his executors and administrators, that each doth covenant,  
 promise, and agree, to and with the other of them, his executors and  
 administrators, by these presents, in manner and form following (that is to  
 say), that they the said copartners shall not nor will, at any time hereafter,  
 use, exercise, or follow the trade of                      aforesaid, or any other  
 trade whatsoever, during the said term, to their private benefit and advan-  
 tage; but shall and will, from time to time, and at all times, during the  
 said term (if they shall so long live), do their and each of their best and  
 utmost endeavors, in and by all means possible, to the utmost of their skill  
 and power, for their joint interest, profit, benefit, and advantage, and  
 truly employ, buy, sell, and merchandise, with the stock aforesaid, and

IN WITNESS WHEREOF, &c.

(Signatures.)

*Various Covenants and Clauses which may be introduced in Articles of Copartnership, according to circumstances.*

NOT TO TRUST ANY ONE WHOM THE COPARTNER SHALL FORBID.

And that neither of the said parties shall sell or credit any goods or merchandise belonging to the said joint trade, to any person or persons, after notice in writing from the other of the said parties, that such person or persons are not to be credited or trusted.

NOT TO RELEASE ANY DEBT WITHOUT CONSENT, ETC.

And that neither of the said parties shall, without the consent of the other, release or compound any debt or demand, due or coming to them on account of their said copartnership, except for so much as shall actually be received, and brought into the stock or cash account of the said partnership.

NOT TO BE BOUND, OR INDORSE BILLS, ETC., FOR ANY ONE WITHOUT CONSENT, ETC.

And that neither of the said parties shall, during this copartnership, without the consent of the other, enter into any deed, covenant, bond, or judgment, or become bound as bail or surety, or give any note, or accept or indorse any bill of exchange for himself and partner, without the consent of the other first had and obtained, with or for any person whatsoever.

NEITHER PARTY TO ASSIGN HIS INTEREST, ETC.

And it is agreed between the said parties, that neither of the said parties shall, without the consent of the other, obtained in writing, sell or assign his share or interest in the said joint trade, to any person or persons whatsoever.

PRINCIPAL CLERK TO BE RECEIVER OF MONEYS, ETC.

That the principal clerk for the time being shall be the general receiver of all the money belonging to the said joint trade, and shall thereout pay all demands ordered by the said parties, and shall from time to time pay the surplus cash to such banker as the said partners shall nominate.

PARTIES TO DRAW QUARTERLY, ETC.

That it shall be lawful for each of them to take out of the cash of the joint stock the sum of \_\_\_\_\_ quarterly, to his own use, the same to be charged on account, and neither of them shall take any further sum for his own separate use, without the consent of the other in writing; and any such further sum, taken with such consent, shall draw interest after the rate of \_\_\_\_\_ per cent, and shall be payable, together with the interest due, within \_\_\_\_\_ days after notice in writing given by the other of the said parties.

(172.)

## SHORTER FORM OF ARTICLES OF COPARTNERSHIP.

ARTICLES OF AGREEMENT, Made the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_ between (*the names and residence of the two parties*), as follows: The said parties above named have agreed to become copartners in business, and by these presents do agree to be copartners together under and by the name or firm of \_\_\_\_\_ in the buying, selling, and vending all sorts of goods, wares, and merchandise to the said business belonging, and to occupy the \_\_\_\_\_ their copartnership to commence on the \_\_\_\_\_ day of \_\_\_\_\_ and to continue \_\_\_\_\_ and to that end and purpose the said (*here state the contributions of each of the parties*), to be used and employed in common between them for the support and management of the said business, to their mutual benefit and advantage. And it is agreed by and between the parties to these presents, that at all times during the continuance of their copartnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves for their joint interest, profit, benefit, and advantage, and truly employ, buy, sell, and merchandise with their joint stock, and the increase thereof, in the business aforesaid. And also that they shall and will at all times during the said copartnership bear, pay, and discharge equally between them all rents and other expenses that may be required for the support and management of the said business; and that all gains, profit, and increase that shall come, grow, or arise from or by means of their said business, shall be divided between them (*state whether equally, or in what proportions*) and all loss that shall happen to their said joint business, by ill commodities, bad debts, or otherwise, shall be borne and paid between them.

And it is agreed by and between the said parties that there shall be had and kept at all times during the continuance of their copartnership, perfect, just, and true books of account, wherein each of the said copartners shall enter and set down, as well all money by them or either of them received, paid, laid out, and expended in and about the said business, as also all goods, wares, commodities, and merchandise, by them or either of them, bought or sold by reason or on account of the said business, and all other matters and things whatsoever to the said business and the management thereof in any wise belonging; which said books shall be used in common between the said copartners, so that either of them may have access thereto, without any interruption or hinderance of the other. And also the said copartners, once in \_\_\_\_\_ or oftener if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and account of all profits and increase by them, or either of them, made, and of all losses by them, or either of them, sustained; and also all payments, receipts, disbursements, and all other things by them made, received, disbursed, acted, done, or suffered in this said copartnership and business; and the same account so made shall and will clear, adjust, pay, and deliver, each to the other, at the time, their just share of the profits so made as aforesaid.

And the said parties hereby mutually covenant and agree to and with each other, that, during the continuance of the said copartnership, neither of them shall nor will indorse any note, or otherwise become surety for any person or persons whomsoever, without the consent of the other of the said copartners. And at the end, or other sooner determination of their copartnership, the said copartners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them.

IN WITNESS WHEREOF, &c.

(Signatures.)

(173.)

CERTIFICATE OF A LIMITED PARTNERSHIP, WITH ACKNOWLEDGMENT  
AND OATH.

THIS IS TO CERTIFY, That the undersigned have, pursuant to the provisions of the statute of the State of \_\_\_\_\_ formed a limited partnership, under the name or firm of \_\_\_\_\_ that the general nature of the business to be transacted is (*describe the business*), and that is the general partner and \_\_\_\_\_ is the special partner, and that the said (*the special partner*) hath contributed the sum of \_\_\_\_\_ dollars as capital towards the common stock, and that the said partnership is to commence on the \_\_\_\_\_ day of \_\_\_\_\_ and is to terminate on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_

(Signatures.)

COUNTY OF \_\_\_\_\_ ss. On the \_\_\_\_\_ day of \_\_\_\_\_ one thousand eight hundred and \_\_\_\_\_ before me came

to be the individuals described in and who executed the above certificate, and they severally acknowledged that they executed the same.

(Signature.)

COUNTY OF \_\_\_\_\_ ss. the general partner named in the above certificate, being duly sworn, doth depose and say, that the sum specified in the said certificate to have been contributed by the special partner to the common stock has been actually and in good faith paid in cash.

Sworn this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_, before me,

(Signature.)

In some of the States, the oath should be made by the general partner; and it would always be safe for all the partners, general and special, to take the oath, and be included in the certificate.

## CHAPTER XXI.

### ARBITRATION.

#### SECTION I.

##### OF THE SUBMISSION AND AWARD.

**By the submission (or reference) is meant the submission of the question or questions to arbitrators.**

**The law favors arbitration in many respects as a peaceable and inexpensive mode of settling difficulties.** Parties may agree to refer a question by an oral agreement, or by a written agreement. The form is not essential. But it is always best to reduce the agreement to writing, and to express it carefully. But parties may, in many of our States, go before a magistrate and agree to refer in the manner pointed out by the statute. In all of them a case may be taken out of court and submitted to referees under an order of court.

**The first essential of an award, without which it has no force whatever, is, that it be conformable to the terms of the submission.** The authority given to the arbitrators should not be exceeded; and the precise question submitted to them, and neither more nor less, should be answered. Neither can the award affect strangers (or those who are not parties to it); and, if one part of it is that a stranger shall do some act, it is not only of no force as to the stranger, but of no force as to the parties, if this unauthorized part of the award cannot be taken away without affecting the rest of the award.

**Nor can it require that one of the parties should make a payment, or do any similar act, to a stranger.** But if the stranger is mentioned in an award only as agent of one of the parties, which he actually is, or as trustee, or as in any way paying for, or receiving for, one of the parties, this does not invalidate the award. And in favor of awards, it has been said that this will be supposed where the contrary is not indicated.

**If the award embrace matters not included in the submission, it is fatal.** If, however, the portion of the award which exceeds the submission can be separated from the rest without affecting the merits of the award, it may be rejected, and the rest will stand; otherwise the whole is void. If the submission specify the particu-

lars to which it refers, or if, after general words, it make specific exceptions, its words must be strictly followed.

**If these words are very general, they will be construed liberally,** but yet without extending them beyond their fair meaning. On the other hand, all questions submitted must be decided, unless the submission provides otherwise; and either party may object to an award, that it omits the decision of some question submitted; but the objection is invalid if it be shown that the party objecting himself withheld that question from the arbitrators. Nor is it necessary that the award embrace all the topics which might be considered within the terms of a general submission. It is enough if it pass upon those questions brought before the arbitrators, and they are so far distinct and independent that the omission of others leaves no uncertainty in the award. If the award does not embrace all of the matters within the submission which were brought to the notice of the arbitrators, it is altogether void.

**In the next place, an award must be certain; that is, it must be** so expressed that no reasonable doubt can be entertained as to the meaning of the arbitrators, the effect of the award, or the rights and duties of the parties under it. For the very purpose of the submission, and the end for which the law favors arbitration, is the final settlement of all questions and disputes; and this is inconsistent with uncertainty.

**In the next place, the award must be possible; for an award** requiring that to be done which cannot be done is senseless and useless. But the impossibility which vitiates an award is one which belongs to the nature of the thing, and not to the accidental disability of the party at the time. Thus, if he be ordered to pay money on a day that is past, this is void; so if he be required to give up a deed which he neither has nor may expect to have; but if he be directed to pay money, the award is good, although he has no money, for it creates a valid debt against him. Nor can a party avoid an award on the ground of an impossibility created by himself, after the award, or indeed beforehand, if he created it for the purpose of evading an expected award.

**This impossibility may be actual, or it may be that created by** law; for an award which requires that a party should do what the law forbids him to do is void, either in the whole, or else for so much as is thus against the law, if that illegal part can be severed from the rest.

**An award must be reasonable; if it be of things in themselves** of no value or advantage to the parties, or out of all proportion to the justice and requirements of the case, or if it undertake to determine for the parties what they should determine for themselves, as, for instance, that the parties should intermarry, it is void.

**Lastly, the award must be final and conclusive.** This necessity springs also from the very purpose for which the law favors arbitration; namely, the settlement and closing of disputes. It is not a valid objection to an award, that it is upon a condition, if the condition be clear and certain, consistent with the rest of the award, in itself reasonable, and such that there could be no doubt whether it were performed or not, or what were the rights or obligations dependent upon it.

**An award may be open to any or all of these objections in part,** without being necessarily void in the whole. So much of it as is thus faulty is void; but if this can be severed distinctly from the residue, leaving a substantial, definite, and unobjectionable award behind, this may be done, and the award then will take effect. It is therefore void in the whole, because bad in part, only where this part cannot be severed from the residue; or where, if it be severed and amended, leaving the residue in force, one of the parties will be held to an obligation imposed upon him, but deprived of the advantage or compensation which it was intended that he should have. Generally, in the construction of awards, they are favored and enforced by the courts, wherever this can properly be done.

**If the submission be in the most general terms, and the award equally so, covering "all demands and questions" between the parties,** either party may still show that a particular demand included in the award either did not exist, or was not known to exist when the submission was entered into, or that it was not brought before the notice of the arbitrators, or considered by them; and then the award will not be permitted to affect this demand.

**If, by an award, money is to be paid in satisfaction of a debt,** this implies an award of a release on the other side, and makes this release a condition to the payment.

**There is no especial form of an award necessary in this country.** If the submission requires that it should be sealed, it must be so. And if the submission was made under a statute, or under a rule of court, the requirements of the statute or the rule should be followed. But even here mere formal inaccuracies would seldom be permitted to vitiate or avoid the reward.

**If the submission contains other directions or conditions, as that it should be delivered to the parties in writing, or to each of the parties,** such directions must be substantially followed. Thus, in the latter case, it has been held that it is not enough that a copy be delivered to one of the parties on each side, but each individual party must have one.

**It may happen, where an award is offered in defence, or as the ground of an action,** that it is open to no objection whatever for



any thing which it contains or which it omits; and yet it may be set aside for impropriety or irregularity in the conduct of the arbitrators, or in the proceedings before them. Awards are thus set aside if "procured by corruption or undue means." This rule rests, indeed, on the common principle that fraud vitiates and avoids every transaction.

So, too, it may well be set aside if it be apparent on its face that the arbitrator has made a material mistake of fact or of law. It must, however, be rather a strong case in which the court would receive evidence of a mere mistake, either in fact or in law, which did not appear in the award, and was not supposed to spring from or indicate corruption.

Other instances of irregularity are the omission to examine witnesses; or an examination of them when the parties were not present, and their absence was for good cause; or a concealment by either of the parties of material circumstances: for this would be fraud. So if the arbitrators, in case of disagreement, were authorized to choose an umpire, but drew lots which of them should choose him. But it has been held enough that each arbitrator named an umpire, and lots were drawn to decide which of these two should be taken, because it might be considered that both of these men were agreed upon. And if an umpire be appointed by lot, or otherwise irregularly, if the parties agree to the appointment, and confirm it expressly or impliedly by attending before him, with a full knowledge of the manner of the appointment, this covers the irregularity.

## SECTION II.

### THE REVOCATION OF A SUBMISSION TO ARBITRATORS.

It is an ancient and well-established rule, that either party may revoke his submission at any time before the award is made; and by this revocation render the submission wholly ineffectual, and of course take from the arbitrators all power of making a binding award. And, generally, this power exists until the award is made.

In this country, our courts have always excepted from this rule submissions made by order or rule of court; for a kind of jurisdiction is held to attach to arbitrators under a rule, and the submission is quite irrevocable, except for such causes as make it necessarily inoperative.

There is a strong reason why a submission by order of court, or before a magistrate, should be preferred where it can be had, from the fact above stated, that the law permits any party who finds an

award is going against him to revoke his submission or reference when he will, before the award is made; provided the award was only by agreement out of court, or not before a magistrate. In some of our States, the statutes authorizing and regulating arbitration provide for the revocation of the submission.

It should be stated, however, that, as an agreement to submit is a valid contract, the promise of each party being the consideration for the promise of the other, a revocation of the agreement or of the submission is a breach of the contract, and the other party has his claim for damages; and damages would generally include all the expenses the plaintiff has incurred about the submission, and all that he has lost by the revocation, in any way.

If either party exercise this power of revocation, he must give notice in some way, directly or indirectly, to the other party; and until such notice, the revocation is inoperative.

Bankruptcy or insolvency of either or both parties does not necessarily operate as a revocation, unless the terms of the agreement to refer, or the provisions of the insolvent law, require it. But the assignees acquire whatever power of revocation the bankrupt or insolvent possessed, and, generally, at least, no further power.

The death of either party before the award is made vacates the submission, if that were made out of court, unless it provides in terms for the continuance and procedure of the arbitration, if such an event occur. But a submission under a rule of court is not revoked or annulled even by the death of a party. So the death or refusal or inability of an arbitrator to act would annul a submission out of court, unless provided for in the agreement; but not one under a rule of court, unless for especial reasons, satisfactory to the court; which would make an appointment of a substitute if it saw fit to continue the reference.

It may be well to add, that, after an award is fully made, neither of the parties without the consent of the other, nor either nor all of the arbitrators without the consent of all the parties, have any further control over it.

If the submission provides for any method of delivering the award, this should be followed. If not, it is common for the referees to deliver the award to the prevailing party or his attorney, on payment by him of the fees of arbitration. Then the prevailing party looks to the losing party for the whole, or a part, or none of the costs, as the award may determine.

The award should be sealed, and addressed to all the parties; and it should not be opened except in presence of all the parties, or of their attorneys, or with the consent of those absent indorsed on

the award. If the submission is under a rule of court, it should be returned to court by the arbitrators, or by the counsel receiving it, sealed, and opened only in court, or before the clerk, or with the written consent of parties.

The submission, or agreement to refer, may be made by exchange of bonds, each party executing and delivering a bond to the other party.

This would be a formal proceeding. But, as has been already said, no especial form is necessary; and often a very simple one, like that below, would suffice.

(174.)

#### SIMPLE AGREEMENT TO REFER.

KNOW ALL MEN, That we, \_\_\_\_\_ of \_\_\_\_\_  
and \_\_\_\_\_ of \_\_\_\_\_ do hereby promise and agree, to and  
with each other, to submit, and do hereby submit, all questions and claims  
between us (*or any specific question or claim, describing it*) to the arbitra-  
ment and determination of (*here name the arbitrators*), whose decision and  
award shall be final, binding, and conclusive on us; (*add, if there are more*  
*arbitrators than one, and it is intended that they may choose an umpire*) and,  
in case of disagreement between the said arbitrators, they may choose an  
umpire, whose award shall be final and conclusive; (*or add, if there be*  
*more than two arbitrators*) and, in case of disagreement, the decision and  
award of a majority of said arbitrators shall be final and conclusive.

IN WITNESS WHEREOF, &c.

(Signatures.)

(175.)

#### ARBITRATION BOND, ONE OR MORE ARBITRATORS.

KNOW ALL MEN BY THESE PRESENTS, That I (*one of the parties*), am  
held and firmly bound unto (*the other party*), in the sum of \_\_\_\_\_  
dollars, lawful money of the United States of America, to be paid to  
the said (*the other party*), executors, administrators, or assigns; for which  
payment, well and truly to be made, I hereby bind myself, my heirs,  
executors, and administrators, \_\_\_\_\_ firmly by these  
presents. Sealed with my seal. Dated the \_\_\_\_\_ day of \_\_\_\_\_  
one thousand eight hundred and \_\_\_\_\_

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the  
above bounden \_\_\_\_\_ shall well and truly submit  
to the decision of (*the referee*), named, selected, and chosen *arbitrator* as  
well by and on the part and behalf of the said \_\_\_\_\_ as  
of the said \_\_\_\_\_ between whom a controversy exists,  
to hear all the proofs and allegations of the parties of and concerning  
(*here set forth the claims or questions referred*)  
and all matters relating thereto, and that the award of the said arbitrator

be made in writing, subscribed by him (*or them*), and attested by a subscribing witness, ready to be delivered to the said parties on or before the day of next. But before proceeding to take any testimony therein, the arbitrator shall be sworn "faithfully and fairly to hear and examine the matters in controversy between the parties to these presents, and to make a just award, according to the best of his (*or their*) understanding." And the said parties to these presents do hereby agree that judgment in the case (*in question*) shall be rendered upon the award which may be made pursuant to this submission, to the end that all matters in controversy in that behalf, between them, shall be finally concluded. Then the above obligation to be void; otherwise to remain in full force and virtue.

(*Signature.*) (*Seal.*)

Sealed and delivered in presence of

[To make the contract complete, the other party should execute and deliver a counterpart to this bond.]

(176.)

#### AWARD OF ARBITRATORS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, We (*names of the arbitrators*), to whom was submitted as *arbitrators* the matters in controversy existing between as by the condition of their respective bonds of submission, executed by the said parties respectively, each unto the other, and bearing date the day of one thousand eight hundred and more fully appears.

NOW, THEREFORE, KNOW YE, That we the *arbitrators* mentioned in the said bonds, having been first duly sworn according to law, and having heard the proofs and allegations of the parties, and examined the matters in controversy by them submitted, do make this award in writing; that is to say, the said (*here follows the award*).

IN WITNESS WHEREOF, have hereunto subscribed these presents, this day of one thousand eight hundred and

(*Signatures.*)

In the presence of

## CHAPTER XXII.

## THE CARRIAGE OF GOODS AND PASSENGERS.

## SECTION I.

## A PRIVATE CARRIER.

One who carries goods for another is either a private carrier or a common carrier. The law makes an important distinction between them.

A private carrier is one who carries for others once, or sometimes, but who does not pursue the business of carrying as his usual and professed occupation. The contract between him and the owner of the goods which he carries is one of service, and is governed by the ordinary rules of law. Each party is bound to perform his share of the contract. Such a carrier must receive, care for, carry, and deliver the goods, in such wise as he bargains to do.

If he carries the goods for hire, whether actually paid or due, he is bound to use ordinary diligence and care; by which the law means such care as a man of ordinary capacity would take of his own property under similar circumstances. If any loss or injury occur to the goods while in his charge, from the want of such care or diligence on his part, he is responsible. But if the loss be chargeable as much to the fault of the owner as of the carrier, he is not liable. The owner must show the want of care or diligence on the part of the private carrier, to make him liable; but slight evidence tending that way would suffice to throw upon him the burden of accounting satisfactorily for the loss. And if there is such negligence on the part of the carrier, or of a servant for whom he is responsible, the carrier is liable, although the loss be caused primarily by a defect in the thing carried.

If he carries the goods without any compensation, paid or promised, he is, in the language of the law, a gratuitous bailee, or mandatary: he is now bound only to slight care; which is such care as every person, not insane or fatuous, would take of his own property. For the want of this care, which would be gross negligence, he is responsible, but not for ordinary negligence.

We sum up what may be said of the private carrier in the remark, that the general rules which regulate contracts and mutual

obligations apply to the duties and the rights of a *private carrier*, with little or no qualification. But it is otherwise with a *common carrier*.

## SECTION II.

### THE COMMON CARRIER.

The law in relation to the rights, the duties, and the responsibilities of a common carrier is quite peculiar. The reasons for it are discernible, but it rests mainly upon established usage and custom. And as these usages have changed considerably in modern times, this law has undergone important modifications.

He is a common carrier "who undertakes, for hire, to transport the goods of such as choose to employ him from some known and definite place or places to other known and definite place or places." He is one who undertakes the carriage of goods *as a business*; and it is mainly this which distinguishes him from the private carrier.

The rights and responsibilities of the common carrier may be briefly stated thus: He is bound to take the goods of all who offer, if he be a carrier of goods, and the persons of all who offer, if he be a carrier of passengers; and to take due care and make due transport and delivery of them. He has a lien on the goods which he carries, and on the baggage of passengers, for his compensation. He is liable for all loss or injury to the goods under his charge, although wholly free from negligence, unless the loss happens from the act of God, or from the public enemy. These three rules will be considered in the next section.

The important thing to be remembered is, that a private carrier is not liable for injury to persons, or loss of or injury to goods, without fault or negligence on his part; but a *common carrier is liable*, without any fault or negligence on his part.

Truckmen or draymen, porters, expressmen, and others who undertake the carriage of goods for all applicants from one city or town to another, or from one part of a city or town to another, are chargeable as common carriers. So, proprietors of stage-coaches are chargeable as common carriers of passengers, and of the baggage of passengers; or of the baggage of others, if they so advertise themselves. So are hackney-coachmen within their accustomed range.

If drivers of stages or omnibuses commonly carry and receive pay for goods or parcels which are not the baggage of passengers, and are held out or advertised, or generally known, as so carrying them, they are common carriers of goods, and the proprietors are liable for the loss of such parcels, although neither they nor the

drivers were in fault. But if there is no such habit or usage, and the driver receives such a parcel to be carried somewhere, and is paid for it, the driver carries it as a private carrier, and not as a common carrier, and is chargeable only for negligence or fault. And if the line of carriages is established for passengers, and the driver does not account for what is paid him for occasional parcels, but takes it as his own perquisite, the proprietors are not answerable even for the driver's fault or negligence, unless circumstances in some way bring the fault home to them.

**In this country, in recent times, the business of carrying goods and passengers is almost monopolized by what are called expressmen, by railroads, or by lines of steam-packets along our coasts, or upon our navigable streams or lakes. All these are undoubtedly common carriers; and although their peculiar method of carrying on this business is new, there can be no doubt of their being, to all intents and purposes, common carriers.**

**Ordinary sailing-vessels are sometimes said to be common carriers. We should be disposed to restrict this term, however, to regular packets; or, at most, to call by this name general freighting ships. It is not, however, necessary to consider this question, as water-borne goods are now almost always carried under bills of lading, which determine the relations and respective rights of the parties. The law of bills of lading is stated in the next section.**

**The boatmen on our rivers and canals are common carriers; and ferrymen are common carriers of passengers by their office, and may become common carriers of goods by taking up that business. A steamboat usually employed as a carrier may do something else, as tow a vessel out of a harbor, or the like; and the character of common carrier does not attach to this especial employment, and carry with it its severe liabilities. Therefore, for a loss occurring to a ship in her charge while so employed, the owner of the steamer is not liable without negligence on his part, or on the part of those whom he employs.**

**The same person may be a common carrier, and also hold other offices or relations. He may be a warehouseman, a wharfinger, or a forwarding merchant. The peculiar liabilities of the common carrier do not attach to either of these offices or employments. Thus, a warehouseman is liable for loss of the goods which he takes for storage, only in case of his own negligence: he is not, as a common carrier is said to be, an insurer of the goods. The question then arises, when the liability of such a person is that of a warehouseman, and when it is that of a carrier.**

**If a carrier receives goods to be stored until he can carry them, — a canal-boatman, for example, — or if, at the end of the journey,**

he stores them for a time, for the safety of the goods or the convenience of the owner, while thus stored he is liable only as warehouseman. But if he puts them into his store or office only for a short time, and for his own convenience, either at the beginning or end of the transit (or journey), they are there in his hands as carrier.

Where these relations seem to unite and mingle in one person, it may be said to be the general rule, that, wherever the deposit, in whatever place or building, is secondary and subordinate to the carriage of the goods, which is therefore the chief thing, the party taking the goods is then a carrier, and is liable as such; and otherwise, he is a depositary only of some kind. If, therefore, goods are delivered to a carrier, or at his depot or receiving-room, with directions not to carry them until further orders, he is only a depositary, and not a carrier, until those orders are received; but when they are received, he becomes a carrier; and if the goods are afterwards lost or injured before their removal, he is liable as a common carrier, without negligence or fault on his part.

### SECTION III.

#### BILLS OF LADING.

The rights and obligations of the ship-owner and the shipper are stated generally in an instrument of which the origin is lost in its antiquity, and which is now in universal use among commercial nations, with little substantial variety of form. It is called the Bill of Lading. It should contain the names of the consignor, of the consignee, of the vessel, of the master, of the place of departure, and of the place of destination; also the price of the freight, with primage and other charges, if any there be, and, either in the body of the bill or in the margin, the marks and numbers of the things shipped, with sufficient precision to designate and identify them.

It should be signed by the master of the ship, who, by the strict maritime law, has no authority to sign a bill of lading until the goods are actually on board. There is some relaxation of this rule in practice, but it should be avoided.

Usually one copy is retained by the master, and three copies are given to the shipper; one of them he usually retains, another he sends to the consignee with the goods, and the other he sends to the consignee by some other conveyance.

The delivery of the goods promised in the bill is to the consignee, or his assigns; and the consignee may designate his assigns by writing on the back of the bill, "Deliver the within-named goods to A B," and signing this order; or the consignee may indorse the



bill with his name only in blank, and any one who acquires an honest title to the goods and to the bill may write over the signature an order of delivery to himself. The consignee has this power, if such be the usage, even if the word "assigns" be omitted. Such indorsement not only gives the indorsee a right to demand the goods, but makes him the owner of the goods.

As the bill of lading is evidence against the ship-owner as to the reception of the goods, and their quantity and quality, it is common to say "contents unknown," or "said to contain," &c. But without any words of this kind, the bill of lading is not conclusive against the ship-owner in favor of the shipper, because he may show that its statements were erroneous through fraud or mistake. But the ship-owner or master is bound much more strongly by the words of the bill of lading, in favor of a third party, who has bought the goods for value and in good faith, on the credit of the bill of lading. In a case which occurred in New York, the court said that, as between the shipper of the goods and the owner of the vessel, a bill of lading may be explained or corrected as far as it is a receipt, that is, as to the quantity of the goods shipped, and the like; but as between the owner of the vessel and an assignee of the bill, for a valuable consideration, paid on the strength of the bill of lading, it may not be explained or corrected; because the master, by signing the bill, authorizes the purchaser to believe the goods are what the bill says they are.

Receipts in the nature of a bill of lading, and sometimes so called, are in common use by our expressmen and other common carriers by land; and the law of bills of lading would apply to such receipts, excepting so far as the difference between a maritime bill of lading and a land bill of lading made a modification of the law necessary.

#### SECTION IV.

#### THE OBLIGATION OF THE COMMON CARRIER TO RECEIVE AND CARRY GOODS OR PASSENGERS.

He cannot refuse to receive and carry goods offered, without good cause; for, by his openly announcing himself in any way as engaged in this business, he makes an offer to the public which becomes a kind of contract as to any one who accepts it. He may demand his compensation, however; and, if it be refused, he may refuse to carry the goods; nor is he bound to carry them if security be offered to him, but not the money. But if the freight-money be not demanded, the owner of the goods, if he is able, ready, and willing to pay it, has all his rights, although he does not make a

formal tender of the money. A carrier may refuse if his means of carriage are already fully employed. But, in a case where a railway company, being common carriers, had issued excursion-tickets for a journey, it was held that they were not excused from carrying passengers according to their contract, upon the ground that there was no room for them in their conveyance; and that in order to avail themselves of this defence, they should make their contract conditional upon there being room. If the common carrier cannot carry the goods without danger to them, or to himself or other goods; or without extraordinary inconvenience; or if they are not such goods as it is his regular business to carry,—he is excused for not carrying them. He is always entitled to his *usual* charge; but not to extraordinary compensation, unless for extraordinary service.

The common carrier of goods is bound to receive them in a suitable way, and at suitable times and places. If he has an office or station, he must have proper persons there, and proper means of security. During the transit, and at all stopping-places, due care must be taken of all goods; and that means the kind and measure of care appropriate for goods of that description. If he have notice, by writing on the article or otherwise, of the need of peculiar care, — as, “Glass, with great care,” or “This side uppermost,” or “To be kept dry,” — he is bound to comply with such directions, supposing them not to impose unnecessary care or labor.

If he carry passengers, he must receive all who offer, unless he has some special and sufficient reason for refusing.

In a case tried before the Supreme Judicial Court of Massachusetts, it was held, that if an innkeeper who has frequently entered a railroad depot and annoyed passengers by soliciting them to go to his inn receives notice from the superintendent of the depot that he must do so no more, and he nevertheless repeatedly enters the depot for the same purpose, and afterwards obtains a ticket for a passage in the cars, with an actual intention of entering the cars as a passenger, and goes into the depot on his way to the cars, and the superintendent, believing that he has entered the depot to solicit passengers, orders him to go out, and he does not exhibit his ticket, nor give notice of his real intention, but presses forward towards the cars, and the superintendent and his assistants therefore forcibly remove him from the depot, using no more force than is necessary for that purpose, such removal is justifiable, and not an indictable assault and battery.

A common carrier is bound to carry his passengers over the whole route, and at a proper speed, or supply proper means of transport; to demand only a reasonable or usual compensation; to notify

his passengers of any peculiar dangers ; to treat all alike, unless there be actual and sufficient reason for the distinction, as in the filthy appearance, dangerous condition, or misconduct of a passenger ; and to behave to all with civility and decorum.

**He must also have proper carriages, and keep them in good condition,** and not overload them ; and suitable horses and drivers ; stop at the usual places, with proper intervals for rest or food ; take the proper route ; and drive at proper speed ; and leave the passengers at the usual stopping-places, or wherever he agrees to. In none of these things can he depart from what is usual and proper at his own pleasure. And if by any breach of these duties a passenger is injured, the carrier is responsible. So if he puts his passengers in peril, and one of them be hurt by an effort to escape, as in jumping off, it is no defence for the carrier to show that he would have been safe if he had remained.

**In one case, it was held that a common carrier who had received a pickpocket as a passenger on board his vessel, and taken his fare,** could not put him on shore so long as he was not guilty of any impropriety. But this may be doubted. The common carrier must certainly employ competent and well-behaved persons for all duties ; and for failure in any of the particulars of his duties and obligations he is responsible not only to the extent of any damage caused thereby, but also, in many cases, for pain and injury to the feelings. He is also bound to deliver to each passenger all his baggage at the end of his journey ; and is held liable if he delivers it to a wrong party on a forged order, and without personal default.

**Lastly, he must make due delivery of the goods at the proper time, in the proper way, and at the proper place, and to the proper person ;** and this person should be some one who was authorized by the owner or sender to receive the goods.

**If a party authorized to receive the goods refuse, or is unable,** to do so, the carrier must keep them for the owner, and with due care ; but now under the liability of a warehouseman, and not of a carrier : that is, he is now liable only for fault of some kind.

**So the carrier must keep the goods for the owner, if he has good reason to believe that the consignee is dishonest, and will defraud the owner of his property.** As to the time when goods should be delivered, it must be within the proper hours for business, when they can be suitably stored ; or if the goods are delivered to the sender himself or at his house, then at some suitable and convenient hour.

**There must be no unnecessary delay, and the goods must be delivered as soon after a detention as may be with due diligence.**

As to the way and the place at which the goods should be delivered, much must depend upon the nature of the goods, and much also upon the usage in regard to them, if such usage exists.

The goods should be so left, and with such notice, as to secure the early, convenient, and safe reception of them by the person entitled to have them. Something also must depend, on this point, on the mode of conveyance. A man may carry a parcel into the house, and deliver it to the owner or his servant; a wagon or cart can go only to the gate, or into the yard, and there deliver what it carries. A vessel can go only to one wharf or another; and is bound to go to that which is reasonably convenient to the consignee, or to one that was agreed upon; but a vessel is not always bound to comply with the requirements of the consignee as to the very wharf the goods should be left at, but may leave the goods at any safe, convenient, and accessible wharf at which such goods are usually left.

Where the goods are not delivered to the owner personally, or to his agent, immediate notice should be given to the owner. The carrier is generally obliged to give notice of the delivery of goods; and if the owner has in any way designated how the goods may be delivered to himself, he is bound to obey this direction. The notice must be prompt and distinct. If the goods are delivered at an unsuitable or unauthorized place, no notice will make this a good delivery.

Railroads terminate at their station; and although goods might be sent by wagons to the house or store of consignees, this is not done, as it is considered that the railroad carrier has finished his transit at his own terminus. Usually the consignee of goods sent by railroad has notice from the consignor when to expect them; and this is so common that it is seldom necessary, in fact, for the agents of the railroad to give notice to the consignee. But this should be given where it is necessary; and should be given as promptly, directly, and specifically as may be necessary for the purpose of the notice.

A railroad company may be compared to owners of ships in this respect, that neither can take the cars or the ships farther than the station or the wharf, and therefore may deliver the goods there. But a carrier by water is bound to give notice that the goods are on the wharf, and is not exonerated as carrier until he gives such notice; whereas, a railroad company is not bound to give notice. The reason of the difference is this: the consignee of goods sent by water cannot know when they will arrive; but when goods are sent by rail, the time of their arrival may be known with sufficient accuracy.

It may happen that some third party may claim the goods under a title adverse to that of the consignor or consignee. If the carrier refuse to deliver them to this third party, and it turns out that the claimant had a legal right to demand them, the carrier might be liable in damages to him. But the carrier may and should demand full and clear evidence of the claimant's title; and if the evidence be not satisfactory he may demand security and indemnity. If the evidence or the indemnity be withheld, he certainly should not be held answerable for any thing beyond that amount which the goods themselves would satisfy, for he is in no fault. If he delivers the goods to such claimant, proof that the claimant had good title is an adequate defence against any suit by the consignor or consignee for non-delivery.

## SECTION V.

### THE LIEN OF THE COMMON CARRIER.

The legal meaning of this word, as we have said before when we have had occasion to use the word in preceding chapters, is the right of holding or detaining property until some charge against it, or some claim upon the owner on account of it, is satisfied.

The common carrier has this right against all the goods he carries, for his compensation. While he holds them for this purpose, he is not liable for loss or injury to them as a common carrier; that is, he is not liable unless the injury happen from his own fault.

He may not only hold the goods for his compensation, but may recover this out of them, by any of the usual means in which a lien upon personal chattels is made productive. That is, he holds them just as if they were pledged to him by the owner as a security for the debt. Therefore, if the debt be not paid in a reasonable time after it is due and demanded, the carrier may have a decree of a court of equity for their sale; or may sell them himself at auction, retaining his pay from the proceeds, and paying over the remainder. But to make this course justifiable and safe, the carrier must wait a reasonable time, and give full notice of his intention, so that the owner may have a convenient opportunity to redeem the goods; and there must be proper advertisement of the sale, and every usual precaution taken to insure a favorable sale; and the carrier must not himself buy the goods, and must act in all respects with entire honesty.

## SECTION VI.

## THE LIABILITY OF THE COMMON CARRIER.

This is perfectly well established as a rule of law, although it is very exceptional and peculiar. It is sometimes said to arise from the public carrier being a kind of public officer. But the true reason is the confidence which is necessarily reposed in him, the power he has over the goods intrusted to him, the ease with which he may defraud the owner of them and yet make it appear that he was not in fault, and the difficulty which the owner might have in making out proof of his default. This reason it is important to remember, because it helps us to construe and apply the rules of law on this subject. Thus, the rule is that the common carrier is liable for any loss or injury to goods under his charge, unless it be caused by the act of God or by the public enemy. The rule is intended to hold the common carrier responsible wherever it was *possible* that he caused the loss, either by negligence or design.

Hence, the act of God means some act in which neither the carrier himself, nor any other man, had any direct and immediate agency. If, for example, a house in which the goods are at night is struck by lightning, or blown over by a tempest, or washed away by inundation, the carrier is not liable. This is an act of God, although man's agency interferes in causing the loss; for without that agency, the goods would not have been there. But no man could have directly caused the loss. On the other hand, if the building was set on fire by an incendiary at midnight, and the rapid spread of the flames made it absolutely impossible to rescue the goods, this might be an inevitable accident if the carrier were wholly innocent, but it would also be possible that the incendiary was in collusion with the carrier for the purpose of concealing his theft; and therefore the carrier would be liable for such a loss, however innocent.

As a general rule, the common carrier is always liable for loss by fire, unless it be caused by lightning, an accidental fire not being considered an act of God, or a peril of the sea; and this rule has been applied to steamboats and other vessels. So, it may be true that, after the lightning, the tempest, or inundation, the carrier was negligent, and so lost the goods which might have been saved by proper efforts, or that he took the opportunity to steal them. If this could be shown, the carrier would of course be liable; but the law will not suppose this without proof, if the first and main cause were such that the carrier *could not* have been guilty in respect to it. So, a common carrier would be liable for a loss caused by a robbery, however sudden, unexpected, and irresistible, or by a theft,

however wise and full his precautions, and however subtle and ingenious the theft, although either of these might seem to be unavoidable by any means of safety which it would be at all reasonable to require.

The general principles of agency extend to common carriers, and make them liable for the acts of their agents, done while in the discharge of the agency or employment. So, the knowledge of his agent is the knowledge of the carrier, if the agent be authorized expressly, or by the nature of his employment, to receive this notice or knowledge. But an agent for a common carrier may act for himself, — as a stage-coachman in carrying parcels, for which he is paid personally and does not account with his employer, — and then the employer, as we have said, is not liable, unless the owner of the goods believed the stage-coachman carried the goods for his employer, and was justified by the facts and apparent circumstances in so believing.

A carrier may be liable beyond his own route. It is very common for carriers, who share between them the parts of a long route, to unite in the business and the profits, and then all are liable for a loss on any part of the route.

If they are not so united in fact, but say they are so, or say what indicates that they are so, they justify a sender in supposing they are united, and then they are equally liable.

If a carrier takes goods to carry only as far as he goes, and then engages to send them forward by another carrier, he is liable as carrier to the end of his own route; he is liable also if he neglects to send the goods on in a proper manner; but he is not liable for what may happen to them afterwards.

## SECTION VII.

### THE CARRIER OF PASSENGERS.

The carriers of passengers are under a more limited liability than the carriers of goods. This is now well settled. The reason is, that they have not the same control over passengers as over goods; cannot fasten them down, and use other means of securing them. But while the liability of the carrier of passengers is thus mitigated, it is still stringent and extreme. No proof of care will excuse the carrier if he loses goods committed to him. But proof of *the utmost care* will excuse him for injury done to passengers; for the carrier of passengers is liable for injury to them, unless he can show that he took all possible care, — giving always a reasonable construction to this phrase; and in the case of railroad companies there is authority

for using the words in almost their literal meaning, — that is, for holding them liable for all injury to passengers which could have been *possibly* avoided.

## SECTION VIII.

### A NOTICE BY THE CARRIER RESPECTING HIS LIABILITY.

The common carrier has a right to make a special agreement with the senders of goods, which shall materially modify, or even wholly prevent, his liability for accidental loss or injury to the goods.

The question is, What constitutes such a bargain? A mere notice that the carrier is not responsible, or his refusal to be responsible, although brought home to the knowledge of the other party, does not necessarily constitute an agreement. The reason is this: the sender has a right to insist upon sending his goods, and the passenger has a right to insist upon going himself with customary baggage, leaving the carrier to his legal responsibility; and the carrier is bound to take them on these terms. If, therefore, the sender or the passenger, after receiving such notice, only sends or goes in silence, and without expressing any assent, especially if the notice be given at such time or under such circumstances as would make it inconvenient for the sender not to send, or for the passenger not to go, then the law will not presume from his sending or going an assent to the carrier's terms.

But the assent may be expressed by words, or made manifest by acts; and it is in each case a question of evidence for the jury whether there was such an agreement.

But a notice by the carrier, which only limits and defines his liability to a reasonable extent, without taking it away, as one which states what kind of goods he will carry, and what he will not; or to what amount only he will be liable for passengers' baggage, without special notice; or what information he will require, if certain articles, as jewels or gold, are carried; or what increased rates must be paid for such things, — any notice of this kind, if in itself reasonable and just, will bind the party receiving it.

No party will be affected by any notice, — neither the carrier, nor a sender of goods, nor a passenger, — unless a knowledge of it can be brought home to him. In a case in Pennsylvania, where the notice was in the English language, and the passenger was a German who did not understand English, it was held that the carrier must prove that the passenger had actual knowledge of the limitation in the notice.



But the knowledge may be brought home to him by indirect evidence. As by showing that it was stated on a receipt given to him, or on a ticket sold him, or in a newspaper which he read, or even that it was a matter of usage, and generally known. This question is one of fact, which the jury will determine upon all the evidence, under the direction of the court. And if the notice is ambiguous, and may have two meanings, they will be directed to give it the meaning which is against the carrier, because it was his business to make it plain and certain.

Any fraud towards the carrier, as a fraudulent disregard of a notice, or an effort to cast on him a responsibility he is not obliged to assume, or to make his liability seem to be greater than it really is, will extinguish the liability of the carrier so far as it is affected by such a fraud.

If a carrier gives notice which he is authorized to give, the party receiving it is bound by it, and the carrier is under no obligation to make a special inquiry or investigation to see that the notice is complied with, but may assume that this is done.

It should, however, be remarked that such notice affects the liability of the common carrier only so far as it is peculiar to him; that is, his liability for a loss which occurs without his agency or fault; for he is just as liable as he would be without any notice for a loss or injury caused by his own negligence or default.

Perhaps a common carrier might make a valid bargain which would protect him against every thing but his own wilful or fraudulent misconduct. But no bargain could be valid which would protect him against this.

## SECTION IX.

### THE CARRIER'S LIABILITY FOR GOODS CARRIED BY PASSENGERS.

A carrier of goods knows what goods, or rather what parcels and packages, he receives and is responsible for. A carrier of passengers is responsible for the goods they carry with them as baggage; what that is, the carrier does not always know; and he is responsible only to the extent of what might be fairly and naturally carried as baggage. This must always be a question of fact, to be settled as such by the jury, upon all the evidence, and under the direction of the court. But there can be no precise and definite standard. A traveller on a long journey needs more money and more baggage than on a short one; one going to some places and for some purposes needs more than one going to other places or for other purposes.

In New York it was decided that baggage does not properly include money in a trunk, or any articles usually carried about the person. And in another New York case, it was held that, where the baggage of a passenger consists of an ordinary travelling-trunk, in which there is a large sum of money, such money is not considered as included under the term *baggage*, so as to render the carrier responsible for it. But generally a passenger may carry, as baggage, money not exceeding an amount ordinarily carried for travelling expenses. So in Massachusetts it was held that common carriers are responsible for money *bona fide* included in the baggage of a passenger, for travelling expenses and personal use, to an amount not exceeding what a prudent person might deem proper and necessary for the purpose.

In Pennsylvania, carriers have been held responsible for ladies' trunks containing apparel and jewels. And in Illinois, a common carrier of passengers has been held liable for the loss of a pocket-pistol, and a pair of duelling-pistols, contained in the carpet-bag of a passenger, which was stolen out of the possession of the carrier. But in Tennessee, it has been held that "a silver watch, worth about thirty-five dollars, also medicines, handcuffs, locks, &c., worth about twenty dollars," were not included in the term *baggage*, and that the carrier was not responsible for their loss. In Ohio, it has been held that a gold watch, of the value of ninety-five dollars, was a part of the traveller's baggage, and his trunk a proper place to carry it in. In another New York case, it has been held that the owners of steamboats were liable as common carriers for the baggage of passengers; but, to subject them to damages for loss thereof, it must be strictly baggage;—that is, such articles of necessity and personal convenience as are usually carried by travellers. And it was accordingly held, in that case, that the carrier was not liable for the loss of a trunk containing valuable merchandise and nothing else, although it did not appear that the plaintiff had any other trunk with him. But in a case in Pennsylvania, where the plaintiff was a carpenter moving to the State of Ohio, and his trunk contained carpenters' tools to the value of fifty-five dollars, which the jury found to be the reasonable tools of a carpenter, it was held that he was entitled to recover for them as baggage.

There is some diversity, and perhaps some uncertainty, in the application of the rule; but the rule itself is well settled, and a reasonable construction and application of it must always be made; and, for this purpose, the passenger himself, and all the circumstances of the case, must be considered.

The purpose of the rule is to prevent the carrier from becoming liable by the fraud of the passenger, or by conduct which would

have the effect of fraud; for this would be the case if a passenger should carry merchandise by way of baggage, and thus make the carrier of passengers a carrier of goods without knowing it and without being paid for it.

**Generally, a common carrier of passengers, by stage, packet, steamer, or cars, carries the moderate and reasonable baggage of a passenger, without being paid specifically for it. But the law considers a payment for this as so far included in the payment of the fare as to form a sufficient ground for the carrier's liability to the extent above stated.**

**The carrier is only liable for the goods or baggage delivered to him and placed under his care.** Hence, if a sender of goods send his own servant with them, and intrust them to him and not to the carrier, the carrier is not responsible. So, if a passenger keeps his baggage, or any part of it, on his person, or in his own hands, or within his own sight and immediate control, instead of delivering it to the carrier or his servants, the carrier is not liable, *as carrier*, for any loss or injury which may happen to it; that is, not without actual default in the matter. Thus, in an action brought in New York to charge a railroad company, as common carriers, for the loss of an overcoat belonging to a passenger, it appeared that the coat was not delivered to the defendants, but that the passenger, having placed it on the seat of the car in which he sat, forgot to take it with him when he left, and it was afterwards stolen; and it was held that the defendants were not liable. But if the baggage of a passenger is *delivered* to a common carrier, or his servant, he is liable for it in the same way and to the same extent as he is for goods which he carries.

**In this country the rules of evidence permit the traveller to maintain his action against the carrier by proving, by his own testimony, the contents of a lost trunk or box, and their value. And the testimony of the wife of the owner is similarly admissible. But it is always limited to such things—in quantity, quality, kind, and value—as might reasonably be supposed to be carried in such a trunk or valise. The rule, with this limitation, seems reasonable and safe, and is quite generally adopted. In Massachusetts it was distinctly denied by the Supreme Court, but was afterwards established by statute.**

**The common carrier of goods or of passengers is liable to third parties for any injury done to them by the negligence or default of the carrier, or of his servants. And it would seem that he is liable even for the wilful wrong-doing of his servants, if it was committed while in his employ, and in the management of the conveyance under his control, although the wrong was done in direct opposition**

to his express commands. So he is for injury to property by the wayside, caused by his fault. But the negligence of the party suffering the injury, if it was material and contributed to the injury, is a good defence for the carrier; unless malice on the carrier's part can be shown.

Where the party injured is in fault, the common carrier has still been held liable, if that fault was made possible and injurious through the fault of the carrier.

If passengers are carried gratuitously, that is, without pay, the common carrier is still liable for injury caused by his negligence.

Whether a railroad company is responsible for fire set to buildings or property along the road, without negligence on its part, has been much considered in this country. In some of our States they are made so liable by statute provision. And this fact, together with the general principles of liability for injury done, would seem to lead to the conclusion that they are not liable, unless in fault, or unless made liable by statute.

We annex to this chapter the Forms of receipts in the nature of a bill of lading, in common use by our steam packets and by express companies. Such a paper given and received would constitute a contract.

(177.)

#### STEAM PACKET COMPANY.

##### *Marks and Numbers.*

RECEIVED FROM  
the following articles, being marked and numbered  
as in the margin, in apparent good order, the contents and value unknown,

to be transported from to  
on one of the company's steamers, and to be  
delivered on their wharf in in like  
good order and condition, the dangers of the sea,  
of fire on board or on wharf, collision, and all  
other accidents excepted.

Dated at

186

}

*For the company.*

(178.)

*Duplicate.*

EXPRESS COMPANY.

FAST FREIGHT LINE.

18

RECEIVED FROM  
the following packages, in apparent good  
order, contents and value unknown:—

EXPRESS COMPANY.

*Advanced Charges, \$*

## RATES.

D'ble 1st class,	cents per 100 lbs.	Marked and numbered as in the margin, to be forwarded by railroad and delivered at
1st class,	cents per 100 lbs.	upon payment of freight therefor, as noted in the margin, subject to the conditions and rules on the back hereof, and those of the several railroads over which the property is transported, which constitute a part of this contract.
2d class,	cents per 100 lbs.	
3d class,	cents per 100 lbs.	
4th class,	cents per 100 lbs.	

AS PER CLASSIFICATION ON BACK.

*Agent.*

On the back of this receipt is a minute and very full classification of all articles likely to be offered for transportation, followed by the

## CONDITIONS AND RULES.

The destination, name of the consignee, and weight of all articles of freight must be plainly and distinctly marked, or no responsibility will be taken for their miscarriage or loss; and when designed to be forwarded, after transportation on the route, a written order must be given, with the particular line of conveyance marked on the goods, if any such be preferred or desired.

The companies will not hold themselves liable for the safe carriage or custody of any articles of freight, unless receipted for by an authorized agent; and no agent of the line is authorized to receive, or agree to transport, any freight which is not thus receipted for.

No responsibility will be admitted, under any circumstances, to a greater amount upon any single article of freight than \$200, unless upon notice given of such amount, and a special agreement therefor. Specie, drafts, bank-bills, and other articles of great intrinsic or representative value, will

only be taken upon a representation of their value, and by a special agreement assented to by the superintendent of the receiving road.

The companies will not hold themselves liable at all for injuries to any articles of freight during the course of transportation, arising from the weather, or accidental delays, or natural tendency to decay. Nor will their guaranty of special despatch cover cases of unavoidable or extraordinary casualties or storms, or delays occasioned by low water and ice; and may be stored at the risk and expense of the owner. Nor will they hold themselves liable, as COMMON CARRIERS, for such articles, after their arrival at their place of destination at the company's warehouses or depots.

Carriages and sleighs, eggs, furniture, looking-glasses, glass and crockery ware, machinery, mineral acids, piano-fortes, stoves and castings, sweet potatoes, wrought marble, all liquids put up in glass or earthenware, fruit, and live animals, will only be taken at the owner's risk of fracture or injury during the course of transportation, loading and unloading, unless specially agreed to the contrary.

Gunpowder, friction matches, and like combustibles will not be received on any terms; and all persons procuring the reception of such freight, by fraud or concealment, will be held responsible for any damage which may arise from it while in the custody of the company.

It is further stipulated and agreed, that goods shipped to points west of shall be subject to a change in classification, and corresponding change of rates beyond those points.

Cases or packages of boots and shoes, and of other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the companies will not be liable for diminution of the original contents; and the companies will hold the freighter, in all cases, to bear the loss arising from improper packing.

It is also agreed between the parties that the said companies, and the railroads and steamboats with which they connect, shall not be held accountable for any deficiency in packages, if receipted for to them in good order.

All articles of freight arriving at their places of destination must be taken away within twenty-four hours after being unladen from the cars, each company reserving the right of charging storage on the same, or placing the same in store at the risk and expense of the owner, if they see fit, after lapse of that time.

## CHAPTER XXIII.

## FIRE INSURANCE.

## SECTION I.

**THE USUAL SUBJECT AND FORM OF THIS INSURANCE.**

This kind of insurance is sometimes made to indemnify against the loss by fire of ships in port; more often of warehouses, and mercantile property stored in them; or of personal property in stores or factories, in dwelling-houses or barns, as merchandise, furniture, books, and plate, or pictures, or live-stock. But the most common application of this mode of insurance is to dwelling-houses.

It may be effected by any individual who is capable of making a legal contract. In fact, however, it is always, or nearly always, in this country, and we suppose elsewhere, made by companies.

There are stock companies, in which certain persons own the capital and take all the profits by way of dividends; and mutual companies, in which every one who is insured becomes thereby a member, and the net profits, or a certain proportion of them, are divided among all the members in such manner as the charter or by-laws of the company may direct. Sometimes both kinds are united, in which case there is a capital stock provided, which is a permanent guaranty fund over and above the premiums received, and a certain part or proportion of the net profits is paid by way of dividend upon this fund, and the residue divided among the insured.

Of late years, the number of mutual fire-insurance companies has greatly increased in this country, and much the largest amount of insurance against fire is effected by them. The principal reason for this is, undoubtedly, their greater cheapness, the premiums required by them being, in general, much less than in the stock offices. For example, if the insurance is effected for seven years, which is a common period, an amount or percentage is charged, about the same as that charged by the stock companies, or a little more. Only a small part of this is taken in cash; for the rest a premium note or bond is given, promising to pay whatever part of the amount may be needed for losses which shall occur during the period for which the note is given. More than this, therefore, the insured cannot be bound to pay, and it frequently happens that no

assessment whatever is demanded ; and sometimes, where the company is well established, and does a large business upon sound principles, a part of the money paid by him is refunded when the insurance expires, or credited to him on the renewal of the policy, if such be his wish.

**The disadvantage of these mutual companies is, that the premiums paid and premium notes constitute the whole capital or fund out of which losses are to be paid for.** To make this more secure, it is provided by the charter of some companies that they shall have a lien on the land itself on which any insured building stands, to the amount of the premium. But while this adds very much to the trustworthiness of the premium notes, and so to the availability of the capital, it is, with some persons, an objection that their land is thus subjected to a lien or incumbrance.

**There is another point of difference which recommends the stock company rather than the mutual company ; it is, that the stock company will generally insure more nearly the full value of the property insured, while the mutual companies are generally restrained by their charters from insuring more than a certain proportion, namely, from one-half to three-fourths, of the assessed value of the property.** It would follow, therefore, that one insured by a mutual company cannot be fully indemnified against loss by fire.

#### USAGE.

**The method and operation of fire insurance have become quite uniform throughout this country ; and any company may appeal to the usage of other companies to answer questions which have arisen under its own policy ; only, however, within certain rules, and under some well-defined restrictions.**

**In the first place, usage may be resorted to for the purpose of explaining that which needs explanation, but never to contradict that which is clearly expressed in the contract.** And no usage can be admitted even to explain a contract, unless the usage be so well established, and so well known, that it may reasonably be supposed that the parties entered into the contract with reference to it. And not only the terms of the contract must be duly regarded, but those of the charter or act of incorporation.

**In regard to the execution of a fire policy, and what is necessary to constitute such execution, we say that delivery is not strictly necessary, and a signed memorandum may be sufficient, or, indeed, an oral bargain only, and that this insurance may be effected by correspondence, and that the contract is completed when there is a proposition and assent.**



If proposals are made on either side by letter, and accepted by the other party, also by letter, this is a valid contract of insurance as soon as the party accepting has mailed his letter to that effect, if he have not previously received notice of a withdrawal of the proposals.

It has been held in an action on a fire policy, that a memorandum made on the application-book of the company by the president, and signed by him, was not binding, where the party to be insured wished the policy to be delayed until a different adjustment of the terms could be settled, and, after some delay, was notified by the company to call and settle the business or the company would not be bound, and he did not call. The court held that there was here no consummated agreement. A subsequent adoption or ratification of a policy made by an agent is equivalent, either in a fire or marine policy, to the making originally of the contract.

## SECTION II.

### THE CONSTRUCTION OF POLICIES AGAINST FIRE.

It is sufficient if the words of the policy describe the persons, the location, and the property, with so much distinctness that the court and jury have no difficulty in determining their identity with a certainty which prevents any real and substantial doubt.

In the construction of this as of other contracts, the intention of the parties is a very important and influential guide; but it must be the intention as *expressed*; for otherwise, a contract which was not made would be substituted for that which was made; and evidence from without the contract would be permitted to vary and to contradict it. Thus, where stock in trade, household furniture, linen, wearing-apparel, and plate were insured in a policy, the court held that the term "linen" must be confined to "household linen," and would not include linen drapery goods purchased on speculation. But in a case where the policy required that the houses, buildings, or other places where goods are deposited and kept, shall be truly and accurately described, and the place was described as the dwelling-house of the insured, whereas he occupied only one room in it as a lodger, this description was held sufficient.

It was held in another case that the insurance by an innkeeper against fire of his "interest in the inn and offices" does not cover the loss of profits during the repair of the damaged premises. And in another, the words "stock in trade," when used in a policy of insurance in reference to the business of a mechanic, as a baker, were

held to include not only the materials used by him, but the tools, fixtures, and implements necessary for the carrying on of his business ; and the words in question were held to have a broader application to the business of mechanics than to that of merchants.

**A policy upon wearing-apparel, household furniture, and the stock of a grocery, covers linen sheets and shirts actually laid in for family use, and such as were laid in for sale or traffic in the usual way in the store ; but not such as, being smuggled, were concealed and intended for secret sale.**

**So, if the designation of the insured be common to many persons, the intention of the parties must decide for whom it is made. Whatever is written on any part of the sheet containing the policy, or even on a separate paper, if referred to or signed by the parties as a part of the policy, is thereby made a part of it. But things said by either party while making their bargain, or written on other paper, and not so referred to or signed, form no part of it.**

**Alterations may be made at any time by consent. But a material alteration by either party, without the consent of the other, renders the contract void ; although it was made honestly, in the hope or belief of its being assented to. A court of equity will generally correct a material mistake of fact.**

**A policy may be assigned, unless this is prohibited by the policy itself, and the assignee may sue in the name of the assignor. If the loss is made by the policy payable "to order" or "to bearer," it will then be negotiable by indorsement or delivery ; but it is not certain that the transferee can even then sue in his own name. In New York and some other States, not only these assignees, but their assignees of debts or contracts, may sue in their own names.**

**If the insured transfers the property, unaccompanied by a transfer of the policy with consent of the insurer, this discharges the policy, unless it was expressly made for the benefit of whoever should be owner at the time of the loss. There is usually a clause to the effect that the policy is void if assigned without the consent of the insurers. But this does not apply to an assignment by force of law, as in a case of insolvency, or in a case of death. And after a loss has occurred, the claim against the insurers is always assignable like any other debt. And a seller who remains in possession of the property as trustee for the purchaser, or a mortgagor retaining possession, may retain the policy, and preserve his rights.**

**It is a general rule with our mutual insurance companies that every one who is insured becomes a member of the company. And it follows, necessarily, that every insured party is bound by all the laws and rules of the company, as by laws and rules of his own making.**

## APPLICATIONS.

The mutual fire-insurance companies, by a law or rule which is perhaps universal, require that an application shall be made in writing; and this written application is after a peculiar form, which is prescribed by the rules. It always contains certain definite statements, which relate to those matters which affect the risk of fire importantly. In each form of application sundry questions are put, which are quite numerous and specific, and are those which experience has suggested as best calculated to elicit all the information needed by the insurers, for the purpose of estimating accurately the value of the risk they undertake. Specific answers must be given to all these questions. And this application, with all these statements, questions, and answers, is expressly referred to in the policy, and made a part of the contract.

It is common to state in the printed part of the formal application that it is made on such and such conditions; and these usually follow those statements which are deemed the most material in estimating the risk. These would be considered as express conditions, and therefore the substantial truth of all of them is a *condition precedent* to any right of indemnity in the insured party. By the legal phrase *condition precedent* is meant a condition which must be fully complied with before the contract can take effect. Hence, if any of these statements are false, the policy will be void.

Sometimes there is no distinct application in writing, but the policy itself states the facts relied upon. For this purpose it contains many blanks, which are filled up according to the circumstances of each case. It may happen that what is written in these places may be inconsistent with what is printed; and then it is a general rule that what is written prevails, as that is more immediately and specifically the act of the parties, and may be supposed to express their precise purpose better than the printed phrases which were prepared without especial reference to any particular case. But this rule would not be applied where it would obviously operate injustice.

Policies of fire insurance, especially of mutual companies, often contain a scale of premiums, calculated upon different classes of buildings, of stocks in trade, or other property, in conformity with what is thought to be the greater or less risk of fire in each case. This is a matter of special importance; and if a statement were made by an applicant which put his building or property into a class of which the risk and premium were less than those for the

class to which the building or property actually belonged, and in that way an insurance was effected at such less premium, the policy would undoubtedly be void, even if the false statement were made innocently.

When certain trades or occupations, or certain uses of buildings, or kinds and classes of property, are enumerated as "hazardous," or otherwise specified as peculiarly exposed to risk, the rule, *The expression of one thing excludes what is not expressed*, is applied, and sometimes with severity. This is better illustrated by marine insurance. Thus, in a case in New York, precisely in point, dried fish were enumerated in the memorandum clause as free from average, and "all other articles perishable in their own nature." It was held that the naming of one description of fish implied that other fish were not intended; and that the subsequent words, "all other articles perishable in their own nature," were not applicable, and did not repel this implication. The same rule would be applied, for the same reason and in the same way, to cases of fire insurance.

If the printed conditions represent one class of buildings, or goods, or property, as more hazardous than another, it would not be competent for the insured, whose property was of that kind, to prove by other testimony that it was not more hazardous in fact. Moreover, a description of the property insured, as it is a description for a contract on time, is held to amount to an agreement that the property shall continue within the class where it is put, or at least shall not enter into another that is declared to be more hazardous, during the operation of the policy. There must, however, be a rational, and perhaps a liberal, construction of this rule. Thus, it does not apply where a single article, or one or two, are kept in a store as a part of the stock of goods, although that article, as cotton in bales, is among those enumerated as hazardous. So if the "storing of spirituous liquors" is prohibited, the keeping of wine or brandy in a private house for consumption, or even for sale by retail to boarders, would not discharge the insurers.

In New York it was held that where oils and turpentine, which were classed among hazardous or extra-hazardous articles, were introduced for the purpose of repairing and painting the dwelling insured, and the dwelling was burned while being so repaired, the insurers were liable. But if the building is generally appropriated to a more hazardous occupation than the proposals or the policy indicate, or if the jury find that the introduction of these goods materially increased the actual risk, evidence would be received as to the intention of the parties to the contract; and the true meaning of the contract and the intent of the parties would be

considered. Thus, where the "storing" of certain goods was prohibited, as "hazardous," it was held that having a pipe or two of such articles in the cellar, from which smaller vessels in the store were replenished, did not come within the meaning of the word "storing" in the policy, any more than would the keeping of such articles for home consumption in a dwelling-house insured by a similar policy. So a description of a house as "at present occupied as a dwelling-house, but to be hereafter occupied as a tavern, and privileged as such," is only permission that it should be a tavern, and creates no obligation to occupy and keep it as a tavern on the part of the insured. But if the language is, "to be occupied as so or so, but *not*" in some other certain way, this restriction is a part of the bargain; and, if the building is occupied in the way prohibited, the insurers are discharged.

So if the premises are described as a "private residence," the insurance is not avoided by the fact that the occupants moved out of the house, leaving it vacant, and not the "residence" of any one, unless the jury find that the risk was thereby materially increased. But where the property was represented as a "tavern barn," and the insured permitted its occupation as a livery-stable, the policy was held to be discharged, although the keeper of the livery-stable was removable at the pleasure of the insured. Where a building insured by a company was represented, at the time of effecting the insurance, as connected with another building on one side only, and before the loss happened it became connected on two sides, the policy was held not to be avoided unless the risk thereby became greater.

The general subject of alterations of property under insurance against fire is not without difficulty. On the whole, however, mere alterations, although expensive and important, do not necessarily and of themselves avoid the insurance or discharge the insurers; but they have this effect if they are found by the jury to increase the risk materially, or if they are specifically prohibited in the policy.

Still other questions may arise where material alterations are made, all of which are not easily disposed of. The following are instances: Suppose one gets his dwelling-house insured for seven years, truly describing it as having a shingled roof. After two or three years he determines to take off the shingles, but says nothing to the insurers about it. If he now puts on slates, or a metallic covering which does not require soldering, he does not increase the risk; nor is the work of putting on the new covering hazardous, and we see no grounds for its having any effect on the policy. But suppose the new metallic covering is secured by soldering. This is

certainly a hazardous operation. And if the building takes fire in consequence of this operation, the insurers are certainly discharged.

If the operation is conducted safely through, and the work is entirely finished, we consider it clear that this greater hazard for a time has no effect whatever on the policy after that time, and after all the greater hazard has expired. But let us suppose that while this operation is going forward, and the house is thereby certainly exposed to an increase of risk, the house is set on fire by an incendiary, — without the slightest reference to this alteration, — and burns down. It is not, perhaps, settled, either by authority or practice, whether the insurers are or are not discharged. I am, however, of opinion that the principles of insurance would lead to the conclusion that, if the house be burned from a perfectly independent cause, during an increase of risk incurred for good cause and in good faith, the insurers are not thereby discharged. It is, however, certain that it is always prudent to obtain the consent of the insurers to any proposed alteration. If such consent be asked, and refused, we do not see that the insurers stand on any better footing, or the insured on any worse one; and if the alterations are made and a loss occurs, we should say that the insurers would not, generally at least, be discharged because of their refusal, unless they would have been discharged if the alteration had been made without their knowledge. For if they had a right to object or refuse, it could only be because the contract in effect prohibited this alteration; and then their refusal was not wanted for their defence. And if they have no right to refuse, they can acquire no rights by the refusal.

If the alteration be of a permanent character, and causes a material increase of the danger of fire, then it is a substantial breach of contract; and we should hold that the insurers were discharged as soon as the alteration was made, and indeed as soon as the making of it, or preparations for it, as scaffolding or carpenter's work, materially increased the risk. And they are discharged equally whether the fire be caused by the alteration, or by the work done, or by some wholly independent matter.

The insured may make reasonable repairs without especial leave, and the insurers are liable, although the fire take place while the repairs are going on; and even if it be caused by the repairs.

It may be added, that our fire policies now in use frequently give the insured the right of keeping the property in repair. The failure of the insured to repair a defect in the building, arising after the contract is made, does not prevent the insured from recovering unless he was guilty of gross negligence.

## SECTION III.

## THE INTEREST OF THE INSURED.

**Any legal interest is sufficient.** And if it be equitable in the sense that a court of equity will recognize and protect it, that is sufficient; but a merely moral or expectant interest is not enough. So, one who has made only an oral bargain with another to purchase the other's house, cannot insure it; but if there be a valid contract in law, or if by writing or by part performance it is enforceable in a court of equity, the purchaser may insure. So, if a debtor assign his property to pay his debts, he has an insurable interest in it until the debts are paid, or until the property be sold.

**A partner may have an insurable interest in a building purchased with partnership funds,** although it stands upon land owned by the other partner. A mortgagor may insure the whole value of his property, even after the possession has passed to the mortgagee, if the equity of redemption be not wholly gone. So he may if his equity of redemption is seized on execution, or even sold, so long as he may still redeem. And in case of loss he recovers the whole value of the building, if he be insured on it to that amount.

**A mortgagor and a mortgagee may both insure the same property,** and neither need specify his interest, but simply call it his property. The mortgagee has an interest only equal to his debt, and founded upon it; and if the debt be paid, the interest ceases, and the policy is discharged; and he can recover no more than the amount of his debt.

**It has been held that if a mortgagor is bound by his contract with the mortgagee to keep the premises insured for the benefit of the mortgagee, and does keep them insured, but in his own name, the mortgagee has an equitable interest in or lien upon the proceeds of the policy.**

**One who holds property only in right of his wife may insure the property,** even if his wife be only a joint tenant. And a tenant for years, or from year to year, may insure his interest, but would recover only the value of his interest, and not the value of the whole property.

**We have said that, generally, any one having any legal interest in property may insure it as his own.** But there is one important exception to or modification of this rule. By the charters of many of our mutual insurance companies the company has a lien, to the amount of the premium note, on all property insured. It is obvious, therefore, that no such description can be given, or no such

language used, as would induce the company to suppose they had a lien when they could not have one, or would in any way deceive them as to the validity or value of their lien. In all such cases, all incumbrances must be stated, and the title or interest of the insured fully stated in all those particulars in which it affects the lien.

**A trustee, agent, or consignee may insure the property in his hands against fire.** Generally, the consignee is not bound to insure against fire, but may, at his discretion. He may insure, expressly, his own interest in them for advances, or the owner's interest. It has been held that a consignee may, by virtue of his implied interest and authority, insure, in his own name, goods in his possession *against fire*, to their full value, and recover for the benefit of the owner. But if the interest be not expressed, the policy will be construed as not covering the interest of the owners, if, upon a fair construction of the words and facts, it seems to have been the intention of the parties only to secure the consignee's interest. And an insurance against fire upon merchandise in a warehouse, "for account of whom it may concern," protects only such interests as were intended to be insured at the time of effecting the insurance.

**It is now common for a commission-merchant to cover in one policy, in his own name, all the goods of the various owners who have consigned goods to him.** It has been held that the words "goods held on commission," in fire policies, have an effect equivalent to the words "for whom it may concern," in marine policies, and that they would cover all the goods held on commission which the insured intended to insure.

**A person having a lien on a building under a State law has an insurable interest in the building.**

**A consignee of goods, sent to him, but not received, may insure his own interest in them.** So, any bailee (which means any person to whom property has been delivered for any purpose) who has a legal interest in the chattels which he holds, although this be temporary and qualified, may insure the goods against fire. Thus a common carrier by land, who has a lien on the goods, and is answerable for them if lost by fire (unless it be caused by the act of God or the public enemy), may insure the goods to their full value against fire.

**The insurers must know whom they insure; for they may have a choice of persons, and it is important to them to know whether they are to depend on the care and honesty of this man or of that man.** The insured must so describe the owner as not to deceive them on this point, and so he must the kind of ownership.



Thus, if he aver an entire interest in himself, he cannot support this by showing a joint interest with another.

**So, too, there must be actual authority to make the insurance.** This may be express, or implied in some cases, as it seems to be implied with the consignee, or the carrier, and perhaps, generally, with any one who has an actual possession of, interest in, and lien on, the property. But a tenant in common does not derive from his cotenancy authority to insure for his cotenant; nor could a master of a ship, or a ship's-husband, merely as such, insure the owner's interest against fire, without authority to do so.

## SECTION IV

### DOUBLE INSURANCE.

**By this the party originally insured becomes again insured.** If, by a double insurance, the insured could protect himself over and over again, he might recover many indemnities for one loss. This cannot be permitted; not only because it is opposed to the first principles of insurance, but because it would tempt to fraud, and make it very easy.

**In this country, fire policies usually contain express and exact provisions on this subject.** They vary somewhat; but, generally, they require that any other insurance must be stated by the insured, and indorsed on the policy; and it is a frequent condition that each office shall in that case pay only a ratable proportion of a loss; and it is often added that, if such other insurance be not so stated and indorsed, the insured shall not recover on the policy. And it has been held that such a condition applies to a subsequent as well as to a prior insurance, or to an insurance of any part of the property covered by the other policy. Nor will a court of equity relieve, if sufficient notice and indorsement have not been made. But it has been held that a valid notice might be given to an agent of the company, who was authorized to receive applications and survey property proposed for insurance.

**In some instances, the charter of the company provides** that any policy made by it shall be avoided by any double insurance of which notice is not given, and to which the consent of the company is not obtained, and expressed by their indorsement in the policy. But this would not apply to a non-notice by an insured of an insurance effected by the seller on the house which the insured had bought, if this policy were not assigned to the buyer.

## SECTION V.

## WARRANTY AND REPRESENTATION.

**A warranty is a part of the contract; it must be distinctly expressed, and written either in or on the policy, or on a paper attached to the policy, or, as has been held, on a separate paper distinctly referred to and described as a part of the policy. Then it operates as a condition precedent, that is, as a condition of the policy, which, if it be not performed, the policy never takes effect; therefore, if it be not performed, there is no valid contract; nor can the non-performance be helped by evidence that the thing warranted was less material than was supposed, or, indeed, not material at all.**

**It may be a warranty of the present time, or, as it is called, affirmative; or of the future, and then it is promissory. And it may be, although of the present and affirmative, a continuing warranty, rendering the policy liable to avoidance by a non-continuance of the thing which is warranted to exist. Whether it is thus continuing or not must evidently be determined by the nature of the thing warranted. A warranty that the roof of a house is slated, or that there are only so many fire-places or stoves, would, generally at least, be regarded as continuing; but a warranty that the building was five hundred feet from any other building would not cause the avoidance of the policy if a neighbor should afterwards put up a house within one hundred feet, without any act or privity of the insured.**

**We have seen that statements made on a separate paper may be so referred to as to make them a part of the policy. And it is usual to refer in this way to the written application of the insured, and to all the written statements, descriptions, and answers to questions, which he makes for the purpose of obtaining insurance. But a fair and rational, and, in some cases, a liberal construction, will be given to such statements. An indorsement made upon the policy before it is executed and delivered would take effect as a part of it.**

**It is quite certain that the word "warranty" need not be used, if the language is such as to import unequivocally the same meaning.**

**A statement may be introduced into the policy itself, and be construed not as a warranty, but merely as a license or permission of the insurers that premises may be occupied in a certain way, or some other fact occur without prejudice to the insurance.**

**A representation, in the law of insurance, differs from a warranty, in that it is not a part of the contract. If made after the signing of the policy or the completion of the contract, it cannot, of**

course, affect it. If made before the contract, and with a view to effecting insurance, it is no part of the contract; but if it be fraudulent, it makes the contract void. And if it be false, and known to be false by him who makes it, it is his fraud. To have this effect, however, it must be material; and there is no better test or standard for this than the question, whether the contract would have been made, and in its present form or on its actual terms, if this statement had not been made and believed by the insurers. If the answer is, that the contract would not have been made if this statement had not been made, it is material; otherwise, not. The general rule is, that the statements in the application on a separate sheet have the effect only of representations, and do not avoid the policy unless void in a material point, or unless the policy makes them specially a part of itself, and gives them the effect of warranties. A representation may be more certainly and precisely proved if in writing; but it will have its whole force and effect if only oral.

In some instances, by the terms of the policies, any misrepresentations or concealments avoid the policy. And it is held that the parties have a right to make such a bargain, and that it is binding upon them; and the effect of it would seem to be to give to representations the force and influence of warranties.

If a warranty is broken, however innocently, it avoids all policies, whether material or not; but a misrepresentation does not avoid the policy, unless it is material and fraudulent. And this difference between a *warranty* and a *representation* is very important.

Concealment is the converse of misrepresentation. The insured is bound to state all that he knows himself, and all that it imports the insurer to know, for the purpose of estimating accurately the risk he assumes. A suppression of the truth has the same effect as an expression of what is false. And the rule as to materiality and as to a substantial compliance is the same.

Even the rumor of an attempt to set fire to a neighboring building should be communicated; because the insurer should be informed of any unusual fact, or any circumstance relating to the building materially enhancing the risk.

Insurers must be understood as knowing all those matters of common information, that are as much within their reach as in that of the insured; and these need not be especially stated. But any special circumstance, as a great number of fires in the neighborhood, and the probability or belief that incendiaries were at work, should certainly be communicated; and silence on such a point—especially if the place of business of the insurers was at a consid-

erable distance from the premises — would operate as a fraud, and avoid the policy. And any questions asked must be answered, and all answers must be as full and precise as the question requires. If there were a provision in the policy that a certain fact, if existing, must be stated, silence in reference to it would avoid the policy, however immaterial the fact. For concealment in an answer to a specific question can seldom or never be justified by showing that it was not material. Thus, in general, nothing need be said about title; but if it be inquired about, full and accurate answers must be made.

Where the insurance company has, by the terms of the policy, a lien upon or interest in the premises insured to secure the premium note, here it is obvious that any concealment of incumbrance or defect of title would operate as a fraud, and defeat the policy. But in all such cases it is probable that specific questions are put respecting the estate and title of the insured.

It is often required that all buildings standing within a certain distance of the property insured shall be stated; but this might not always be considered as applicable to personal and movable property. Still, an insurance of chattels, described as in a certain place or building, would be held to amount to a warranty that they should remain there; or rather it would not cover them if removed into another place or building, unless, by some appropriate phraseology, the parties expressed their intention that the insured was to be protected as to this property wherever it might be situated. It is not uncommon to insure goods that are in course of transit, against fire; but then it is usual to name the places from which and to which the goods are passing.

## SECTION VI.

### THE RISK INCURRED BY THE INSURERS.

At the time of the insurance the property must be in existence, and not on fire, and not at that moment exposed to a dangerous fire in the immediate neighborhood; because the insurance assumes that no unusual risk exists at that time.

The risk taken is that of fire. And therefore the insurers are not chargeable if the property be destroyed or injured by the indirect effect of excessive heat; or by any effect which stops short of ignition or combustion, when there is no fire. Where, however, an extraordinary fire occurs, the insurers are clearly liable for the effects of it, as where furniture or pictures are injured by the heat, although they do not actually ignite.

They are liable for the injury from water used to extinguish the fire; and for injury to or loss of goods caused by their removal from immediate danger of fire; but not if removed from a mere apprehension from a distant fire, even if it be reasonable; and not if the loss or injury might have been avoided by even so much care as is usually given in times of such excitement and confusion.

In some instances the policies require that the insured should use all possible diligence to preserve their goods; and such a clause would strengthen the claim for injury caused by an endeavor to save them by removal. So the insurers are liable for injury or loss sustained by the blowing up of buildings to arrest the progress of a fire.

Lightning is not fire; and if property be destroyed by lightning, the insurers are not liable, unless there was also ignition, or unless the policy expressly insures against lightning.

Loss by an explosion of gunpowder is a loss by fire; a loss by an explosion caused by steam is not a loss by fire.

Whether, when the negligence of the insured or his servants is to be considered as the sole or direct cause of the fire or loss, the insurers can be held, has been somewhat considered. And as this is the most common and universal danger, and the very one which induces most persons to insure, there has been some disposition to say that no measure or kind of mere negligence can operate as a defence. And in effect this is almost the law. But if the loss be caused by negligence of the insured himself, of so extreme and gross a character that it is hardly possible to avoid the conclusion of fraud, the defence might be a good one, although there were no direct proof of fraud. That the fire was caused by the insanity of the insured should be no defence.

## SECTION VII.

### VALUATION.

Valuation does not often enter into a fire policy, and especially not in a policy made by any of those mutual companies, who now do a very large part of the insurance of this country. And seldom is a building valued when insured by a stock company. If a loss happens, whether it be total or partial, the insurers are bound to pay only so much of the sum insured as will indemnify the assured. But, as care is always taken—and sometimes required by law—not to insure upon any house its whole value, it seldom happens, and, if the proper previous precautions are taken, should never happen, that any question of value arises in a case of a total destruction of a building by fire.

But mutual companies are usually forbidden by their charter to insure more than a certain proportion of the value of a building; and this requires a valuation in the policy, which is conclusive, for some purposes, against both parties. Of course, the insurers can never be held to pay more than the sum insured. And if their charter or by-laws permit a company to insure only a certain proportion of the value, as three-fourths, — on the one hand, if the company insure more than that proportion, as \$3,500 on property valued at \$4,000, they are held to pay only \$3,000, and the assured cannot show that the building was really worth more than \$4,000; and, on the other hand, the valuation, if not fraudulent, is conclusive against the insurers if the building is destroyed; and therefore they cannot show, in defence, that the building was worth less.

I know nothing to prevent the parties from making a valued policy, if they see fit to do so, although this has been questioned. It is not uncommon for companies who insure chattels — as plate, pictures, statuary, books, or the like — to agree on what shall be the value in case of loss.

Sometimes the policy reserves to the insurers the right to have the valuation made anew by evidence, in case of loss. Then if a jury find a less valuation, the insurers pay the same proportion of the new value which they had insured of the former valuation.

The value which the insurers on goods must pay is their value at the time of the loss. And it has been held that a fair sale at auction, of what is left in good order, with due precaution, will be taken to settle that value after the fire, provided the insurers have reasonable notice or knowledge that the auction is to take place.

The valuation determines the amount which the insurers must pay only in case of total destruction. If the building is injured by fire, but not destroyed, the insurers may either repair it, or pay the cost of repairing it.

## SECTION VIII.

### ALIENATION.

Policies against fire are personal contracts between the insured and the insurers, and do not pass to any other party, without the express consent of the insurers.

It is essential to the validity and efficacy of this contract that the insured have an interest in the property when he is insured, and also when the loss takes place; for otherwise it is not his loss, and he can have no claim for indemnity. If, therefore, he alienates the whole of his interest in the property before the loss, he has no claim;

and if he alienates a part, retaining a partial interest, he has only a partial and proportionate claim.

**After a loss has occurred, the right of the insured to indemnity is vested and fixed; and this right may be assigned for value, so as to give an equitable claim to the assignee, without the consent of the insurers. Policies against fire usually contain a provision that an assignment of the property, or of the policy, shall avoid the policy. But this does not apply to an assignment of the claim after a loss.**

**A dissolution of the partnership before loss, and a division of the goods, so that each partner owned distinct portions, was held to be in violation of a condition against "any transfer or change of title in the property insured."**

**A conveyance by one insured, intended to secure a debt, would be treated in a court of equity as a mortgage, and therefore it would not terminate the interest of the insured. A contract to convey is not an alienation. Nor is a conditional sale, where the condition must precede the sale, and is not yet performed. Nor is a mortgage, not even after breach, and perhaps entry for a breach, and not until foreclosure. Nor selling and *immediately* taking back. In some policies, however, alienation by mortgage is directly prohibited.**

**If several estates are insured in one policy, and one or more are aliened (or conveyed away), the policy is void as to those only which are aliened. If many owners are insured in one policy, a transfer by one or more to strangers, without the act or concurrence of the other owners, will avoid the policy for only so much as is thus transferred.**

**In practice, care should be taken to have all such transfers regularly made and notified to the insurers, and their consent obtained, and duly indorsed or certified, and all the rules or usages of the insurers in this respect complied with.**

## SECTION IX.

### NOTICE AND PROOF.

**Where the policy requires a certificate of the loss, the production of it is a condition precedent to any claim for payment. And it must be such a certificate as is required; but a substantial compliance with its requirements is sufficient. So, too, if the notice is to be given *forthwith*, there must be no unreasonable or unnecessary delay. And all the circumstances of the case are considered, in determining whether there was or was not due diligence. Where a**

certificate is required to be furnished "as soon as possible," it is still sufficient if it be furnished within a reasonable time. But where the fire took place in November, and the account of loss was not furnished till the March following, it was held not to be a compliance with the conditions. Generally, this is a question for the jury.

As premises insured against fire may be supposed always open to the inspection of the agents of the insurers, a general notice of the fire will be enough.

## SECTION X.

### ADJUSTMENT AND LOSS.

Insurers against fire are not held to pay for loss of profits, gains of business, or other indirect and remote consequences of a loss by fire. We do not know, however, why profits may not be expressly insured against fire where it is not forbidden by or inconsistent with the charter of the insurers.

There is one wide difference between the principle of adjustment of a marine policy and of a fire policy. In the former, if a proportion only of the value is insured, the insured is considered as his own insurer for the residue, and only an equal proportion of the loss is paid. Thus, if, on a ship valued at \$10,000, \$5,000 be insured, and there is a loss of one-half, the insurers pay only one-half of the sum they insure, just as if some other insurer had insured the other \$5,000. But in a fire policy, the insurers pay in all cases the whole amount which is lost by fire, provided only that it does not exceed the amount which they insure.

Most of the fire policies used in this country give the insurers the right of rebuilding or repairing premises destroyed or injured by fire, instead of paying the amount of the loss. If, under this power, the insurers rebuild the house insured at a less cost than the amount they insure, this does not exhaust their liability; they are now insurers of the new building for the difference between its cost and the amount they have insured. And if the new building burns down or is injured while the policy continues, the insured may claim so much as, added to the cost already incurred, shall equal the sum for which he was insured.

It may be important to add, that, under our common mutual policies, the insured will also be liable for assessments for losses after the destruction of his building by fire, during the whole term of the policy.

The jury, to whom the whole question of damages is given, are to inquire into the greater value of a proposed new building, or of



a repaired building, and assess only such damages as shall give the insured complete indemnity.

Where insurers reserve a right to replace articles destroyed, if the insured refuse to permit them to examine and inventory the goods that they might judge what it was expedient for them to do, such conduct on the part of the insured would be strong evidence to the jury to prove an overstatement of loss.

I have not thought it would be useful to give forms of various policies. Applicants never make them, as they are always furnished by the insurance companies; each one having its own form, and using no other. But the following forms, of immediate notice of loss, of a later and fuller statement under oath with a magistrate's certificate, and assignments of policies, may be found useful. They must be all adapted, in practice, to the peculiar circumstances of each case.

(179.)

TO THE FIRE INSURANCE COMPANY.

TAKE NOTICE, That on the                      day of                      inst. (or last), a fire broke out in the building No.                      in                      Street, in the city of (or otherwise describe the location), whereon I am insured by your policy, No.                      the sum of                      dollars. I have not yet learned, and do not know, in what way the fire was caused; but, as soon as I am able, I will give you further information on the subject. (*If the insured or his agent knows, or has reasonable cause for supposing, how the fire was caught, he should say so, and state what particulars he can.*)

The house was wholly (or partially) destroyed by fire; and I shall claim a payment from you under your policy.

Written and sent this                      day of                      in the year

(Signature.) (Seal.)

Witness to the signature and sending.

(Signature of witness.)

Some insurance companies, and, indeed, the express provisions of some policies, require that a sworn statement of the facts and circumstances of the loss, and the particulars of the claim, be given to the insurance company, with the certificate of a magistrate. I do not know that this course might not be always prudent. The form in which it is done must vary in each case, and be adapted to the peculiarities of that case. But the following form will generally be a safe guide:—

(180.)

## TO THE INSURANCE COMPANY.

WHEREAS, The said Insurance Company, by their policy numbered and dated on the day of in the year caused me to be insured in the sum of dollars against loss or damage by fire to the following-described building; that is to say (*here describe or designate the building sufficiently to show clearly where and what it was, taking the description from the policy, but not copying it at length*). Now, I, the said (*name of the assured*), having been solemnly sworn, do depose and say, —

1. That on the day of now last past, between the hours of and a fire broke out in said building, whereby the same was greatly damaged (*or destroyed*), and the said fire was, according to my best knowledge and belief, caused by (*here set forth the causes so far as they are known, or supposed on reasonable grounds*), and I aver that the said fire was not caused by me, or by my design and concurrence, or with any previous knowledge on my part, or in any manner attributable to me or to my agency, direct or indirect.

2. That I was interested in the said property in the following manner; that is to say (*here say whether the insured owned the property himself, or was a tenant of it, or a landlord, or mortgagor, or mortgagee, or trustee, or how otherwise he was interested*).

3. That there was no other insurance against fire of the said property (*or, if there was any other, state what it was*).

4. That the occupants of the building at the time of the fire were, so far as is known to me, the following persons (*set forth the names of the occupants, the parts of the building occupied by each one, and the purpose for which it was occupied*).

5. That the actual value of the building in dollars at the time of the fire was, according to my best belief and judgment, dollars. (*If the property was personal, as goods, furniture, or the like, say, as may appear by the schedule annexed*).

6. That the whole of said value was lost by the fire; and being more than the sum insured thereon, I now claim of said insurance company said sum of dollars. (*Or if the building was injured, and not destroyed, then say that so much of the value — stating the amount — of said building was lost by the fire, inasmuch as the building, if repaired, cannot be restored to as good a condition as before, for a less amount than that sum.*)

WITNESS my hand at this day of in the year

(Signature.)

(Certificate to be appended to the foregoing.)

STATE OF

COUNTY OF

} ss.

I (*name of the magistrate*), a justice of the peace in and for said county (*or what else may be his office*), dwelling near to the property above men-

tioned, in the town (*or city*) of \_\_\_\_\_ have investigated the circumstances attending the said fire, and am personally acquainted with the said (*name of insured*), whose character is good; and I believe that the above statement to which the said (*name of insured*) has made oath in my presence is true; that the loss cannot be imputed to fraud or misconduct on his part; and that he has suffered by the fire a loss of \_\_\_\_\_ dollars. I am not in any way interested in the said property, or in the said policy, or any claim under the same.

IN WITNESS of all which I have hereunto set my hand and my seal  
(*of office, if he has an official seal*), at \_\_\_\_\_ this \_\_\_\_\_ day of  
in the year \_\_\_\_\_

(*Signature of magistrate.*) (Seal.)

(181.)

#### ASSIGNMENT OF A POLICY TO BE INDORSED THEREON.

I (*name of the insured*), insured by the within policy, in consideration of a dollar paid to me by (*name of the assignee*), and for other good considerations, do hereby assign and transfer to the said (*name of the assignee*) this policy, together with all the right, title, interest, and claim which I now have or hereafter may have in, to, or under the same.

WITNESS my hand, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(*Witness.*) (Signature.)

It is always best to write this assignment on the policy itself; but it may sometimes happen that this is not convenient or possible, the insured who wishes to make the assignment not having the policy within his possession or easy reach. Then the assured may use the following form:—

(182.)

WHEREAS, The \_\_\_\_\_ Insurance Company, by their policy, numbered \_\_\_\_\_ and dated on \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ caused me to be insured against loss or damage by fire on a certain building, being (*designate the building by location or otherwise*), in the sum of \_\_\_\_\_ dollars. Now, I, the said (*name of the insured*), in consideration of one dollar paid to me by (*name of the assignee*), and for other good considerations, have transferred and assigned, and do by these presents transfer and assign, unto the said (*name of the assignee*), the said policy of insurance, and all the right, title, interest, or claim which I now have or ever may have in, to, or under the same, and in and to any sum of money which now is or shall ever be payable thereon.

WITNESS my hand, this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
(*Witness.*) (Signature.)

If the policy be on goods, or vary in other respects, then the assignment must be made to conform to the facts.

It is always best to get the assent of the insurance company to the transfer *before it is made*. And always the assignment, when made, should be exhibited without loss of time, to them or to their agent authorized to give their assent, and this assent to the assignment be obtained and written upon the policy, or, if that cannot conveniently be, on the assignment, and in the books of the insurance company.

---

## CHAPTER XXIV.

### LIFE INSURANCE.

#### SECTION I.

##### THE PURPOSE AND METHOD OF LIFE INSURANCE.

If A insures B a certain sum payable at B's death to B's representatives, we have only the insurer and insured, as in other cases of insurance. But if A insures B a sum payable to B or his representatives on the death of C, although C is often said to be insured, this is not quite accurate; more properly, B is the *insured* party and C is the *life-insured*.

Life insurance is usually effected in this country in a way quite similar to that of fire insurance by our mutual companies. That is, an application must be first made by the insured; and to this application queries are annexed by the insurers, which inquire, with great minuteness and detail, into every thing which can affect the probability of life. These must be answered fully; and if the insurer be other than the life-insured, there are usually questions for each of them. There are also, in some cases, questions which should be answered by the physician of the life-insured, and others to be answered by his friends or relatives; or other means are provided to have the evidence of the physician and friends.

These questions are not precisely the same in the forms given out by any two companies; and we do not speak of them in detail here. The rules as to the obligation of answering them, and as to the sufficiency of the answers, must be the same in life insurance that we have already stated in the chapter on fire insurance; or, rather, must rest upon the same principles. And the same rules and principles of construction therein set forth would doubtless be applied

to the question whether a contract had been made, or at what time it went into effect.

It may be said generally, that it is prudent to add to the answers to these questions, "according to my best knowledge and belief." Then the insurers would be held, although the answer was erroneous, if it was made in good faith.

## SECTION II.

### THE PREMIUM.

If the insurance be for one year only, or less, the premium is usually paid in money, or by a note, at once. If for more than a year, it is usually payable annually. But it is common to provide or agree that the annual payment may be made quarterly, with interest from the day when the whole is due. Notes are usually given; but if not, the whole amount would be considered due. If A, whose premium of \$100 is payable for 1856 on the first day of January, then pays \$25, and is to pay the rest quarterly, but dies on the 1st of February, the \$75 due, with interest from the 1st of January, would be deducted from the sum insured. If the policy provides that the risk shall "terminate in case the premium charged shall not be paid in advance on or before the day at noon on which the same shall become due and payable," and the day of payment falls on Sunday, the premium is not payable until Monday, although the assured dies on Sunday afternoon.

Provision is sometimes made that a part of the premium shall be paid in money, and a part in notes, which are not called in unless needed to pay losses. The greater the accommodation thus allowed, the more convenient it is obviously to the insured, but the less certain will be of the ultimate payment of the policy, because, in the same degree, the fund for the payment consists only of such notes, and not of payments actually made and invested. There is a great diversity among the life insurance companies in this respect. But even the strictest, or those which require that all the premiums shall be paid in money, usually provide also that an amount may remain overdue, without prejudice, which does not exceed a certain proportion — say one-half or one-third — of the money actually paid in on the policy. This is considered, under all ordinary circumstances, safe for the company, because every policy is worth as much as this to the company. Or, in other words, it would always be profitable for the company to obtain a discharge of its obligation on a policy, by repaying the insured so small a proportion of what has been received from him.

Taking a note would certainly be a waiver of immediate payment, if not itself a payment.

The premiums, after the first, must be paid on the days on which they fall due. If no hour be mentioned, then it is believed that the insured would have the whole day, even to midnight. It is possible, however, that he might be restricted to the usual hours of business, and perhaps even to those in which the office of the insurers is open for business.

Practically, the utmost care is requisite on the part of the assured to pay his premium as soon as it is due; and it is a wise precaution to pay it a little before. This is the only proper and safe course. But we believe it to be not unusual for the insurers to accept the premium if offered them a few days after, and continue the policy as if it were paid in season, provided no change in the risk has occurred in the mean time; but this should not be trusted to without an express agreement, if it can be avoided.

Sometimes the rules of the company, and in some States the statutes, provide that, if a policy be defeated by a non-payment of the premium, the insured does not lose all that he has paid; but a certain proportion of the value which the policy then had shall be paid to him.

The time of the death is sometimes very important. If the policy be for a definite period, it must be shown that the death occurs within it. If there were an insurance on a man's life for a year, and some short time before the expiration of the term he received a mortal wound, of which he died one day after the year, the insurer would not be liable. And the terms of the policy may possibly make it necessary to determine which of two persons lived longest; as if a sum were insured on the joint lives of two persons, to be paid to the representatives of the survivor.

### SECTION III.

#### THE RESTRICTIONS AND EXCEPTIONS IN LIFE POLICIES.

Our policies usually contain certain restrictions or limitations as to place, the life-insured (he whose life is insured for his own or another's benefit) not being permitted to go beyond certain limits, or to certain places. But there is nothing to prevent a bargain permitting the life-insured to pass beyond these bounds, either in consideration of new and further payments, or of the common premium.

So certain trades or occupations, as of persons engaged in making gunpowder, or of engineers or firemen about steam-engines,

are considered extra-hazardous, and as therefore prohibited, or requiring an extra premium.

The exception, however, which has created most discussion is that which makes death by suicide an avoidance of the policy. The clause respecting duelling is plain enough; and no one can die in a duel without his own fault. But it is otherwise with regard to self-inflicted death. This may be voluntary and wrongful, or the result of insanity and disease, for which the suffering party should not be held responsible.

The general principles of the law of contracts, and of the law of insurance particularly, would lead to the conclusion that "death by his own hands," but without the concurrence of a responsible will or mind, would not discharge the insurers, without a positive provision to that effect. We should put such a death on the same footing with one resulting from a mere accident, brought about by the agency, but without the intent, of the life-insured. As if poison were sent or given to him by mistake for medicine, and he swallowed it under the same mistake.

Much question has been made when a man may be believed to be dead, simply because nothing is known about him, or has been known for a long period. But there is not and cannot be any other presumption of law on the subject than that, after a certain period of absence and silence, there is a presumption of death; and seven years has been mentioned in England and in this country as this period, and even sanctioned by legislation in New York. But all questions of this kind we regard as pure questions of fact. Which-ever party rests his case upon the death or the life of a certain person, at a certain time, must satisfy the jury upon this point by such evidence as may be admissible and sufficient.

#### SECTION IV.

##### THE INTEREST OF THE INSURED.

Every one insured in any way must have an interest in the subject-matter of the insurance. A person may effect insurance on his own life in the name of a creditor, for a sum beyond the amount of the debt, the balance to inure to his family; and the policy will be valid for the whole amount insured. Any one may insure his own life; but if the insured and the life-insured are not the same, that is, if the insured be insured on some other life than his own, interest must be shown.

A father has an insurable interest in the life of his minor son. And the general rule is, that any substantial pecuniary interest is

sufficient, although not strictly legal nor definite. This has been held in the case of a sister dependent on a brother for support; and the rule would be held to apply not only to all relations, but where there was no relationship, if there were a positive and real dependence; that is, any one may insure a sum on the life of any other person on whom he or she really depends for support or for comfort. And, generally, it is said to be enough, if, according to the ordinary course of events, pecuniary loss or disadvantage will naturally and probably result from the death of the one whose life is insured.

So an existing debt gives the creditor an insurable interest in the life of a debtor. But if the debt be not founded on a legal consideration, it does not sustain the policy. And if the debt be paid before the death of the debtor, the insurers are discharged.

#### SECTION V.

##### THE ASSIGNMENT OF A LIFE POLICY.

Life policies are assignable at law, and are very frequently assigned in practice. And the assignee of a policy is entitled on the death of the party insured to recover the full sum insured, without reference to the amount of the consideration paid by him for the assignment. A large proportion of the policies which are effected are made for the purpose of assignment; that is, for the purpose of enabling the insured to give this additional security to his creditor. If there are rules of the company which relate to an assignment of it, or if the terms of the policy do so, they are binding on the parties. On the one hand, an assignment would operate as a discharge of the insurers, provided a rule or expressed provision gave this effect to the assignment; and, on the other, if the agreement were that the policy should continue in favor of the assignee, even after an act which discharged it as to the insured himself, — as, for example, his suicide, — the insurers would be bound by it.

It is an important question, what constitutes an assignment. The general answer must be, any act distinctly importing an assignment has that effect. And, therefore, a delivery and deposit of the policy for the purpose of assignment will operate as such, without a formal written assignment. So will any transaction which gives to a creditor of the insured a right to payment out of the insurance.

It seems, however, that delivery is necessary. And where an assignment was indorsed on the policy, and notice given to the



insurer, but the policy remained in the possession of the insured, it was held that there was no assignment. Where, however, the assignment is by a separate deed, which is duly executed and delivered, this is an assignment of the policy, without actual delivery of the policy itself.

## SECTION VI.

### WARRANTY, REPRESENTATION, AND CONCEALMENT.

The general principles on this subject are the same which we have already stated in reference to fire insurance. In life policies, however, the questions which must be answered are so minute, and cover so much ground, that difficulty seldom arises except in relation to the answers. One advisable precaution is for the answerer to discriminate carefully between what he knows and what he believes. If he says simply "yes" or "no," or gives an equivalent answer, this is in most cases a strict warranty, and avoids the policy if there be any material mistake in the reply. But where the answerer adds the words, "to the best of my knowledge and belief," he *warrants* only the fact of his belief, or, in other words, nothing but his own entire honesty.

The cases which turn upon the answers to the questions are very numerous; but they necessarily rest upon the especial facts of each case, and hardly permit that general rules should be drawn from them. Some, however, may be stated.

The first is, that perfect good faith should be observed. The want of it taints a policy at once; and the presence of it goes far to protect one. Thus, where the life-insured was beginning to be insane, but was wholly unconscious of it, the policy was not vitiated by the concealment, although two doctors in attendance upon him knew how the case stood.

Most of the policies of the present day provide that the policy is made on the faith that the statements in the application for insurance are true, and if they shall be found in any respect untrue, the policies shall be avoided. Then the stipulations are considered as warranties, and if untrue, even in a point immaterial to the risk, avoid the policies.

There is a warranty, or statement, usually making a part of nearly all life policies; it is, that the life-insured is in good health. But this does not mean perfect health, or freedom from all symptoms or seeds of disease. It means reasonably good health; and loose as this definition or rule may be, it would be difficult to give any other. And if a jury, on the whole, are satisfied that the

constitution of one warranted to be "in good health" is radically impaired, and the life made unusually precarious, there is a breach of the warranty, although no specific disease is shown which must have that effect. On the other hand, this warranty is not broken by the presence of a disease which does not usually tend to shorten life (in one English case dyspepsia was said to be such a disease), unless it were organic, or had increased to that extreme degree as to be of itself dangerous.

**Consumption is the disease which is most feared in this country,** as well as in England. And the questions which relate to the symptoms of it, as spitting of blood, cough, and the like, are exceedingly minute. But here also there must be a reasonable construction of the answers. Thus, if spitting of blood be positively denied, there may be no falsification in fact, though literally speaking the life-insured may have spit blood many times, as when a tooth was drawn, or from some accident. If there be an action on the policy, and the insurers rest their defence on any falsification of this kind, the question usually put to the jury is: Was the party affected by any of these or similar symptoms, in such wise that they indicated a disorder tending to shorten life? And any symptom of this kind, however slight,—as a drop or two of blood having ever flowed from inflamed or congested lungs,—should be stated. Statements materially untrue on these points avoid the policy, although the insured, at the time of his application, did not believe that he had any pulmonary disease, and the statement made by him was not intentionally false, but, according to his belief, true.

**The insurers almost always ask who is the physician of the life-insured,** that they may make inquiries of him if they see fit. And his name must be stated fully and accurately. It is not enough to give the name of the usual attendant; but every physician really consulted should be named, and every one consulted as a physician, although he is an irregular practitioner or quack.

**If the warranty be that the life-insured is a person of sober and temperate habits,** it has been held, in an action on such a policy, that the jury are not to inquire whether his habits of drinking are such as might injure his health; for if he has any "habits of drinking," this would discharge the insurers, because they have a perfect right to say that they will insure only those who are temperate. But it may be answered, that although the insurers have this right, and there may be good reasons why this should be the general practice, yet unless they use the word "abstinence," or something equivalent, they have no right to say that any one is not "temperate" who does not drink enough to affect his health; for as, generally, all intemperance must affect health injuriously, if there be no such

injury, the presumption would be that there was no intemperance; and there is clearly a broad distinction between temperance and total abstinence.

An answer, "not subject to fits," is not necessarily falsified by the fact that the life-insured has had one or more fits. But if the question had been, "Have you ever had fits?" then it is said that any fit of any kind, and however long before, must be stated. But if a man had a fit when a young child, and forgot to mention it, or considered it wholly unimportant, and it had nothing to do with his state of health, it would hardly be held a falsification which would avoid the policy.

As there is always a general question as to any facts affecting health not particularly inquired of, a concealment of such a fact goes to a jury, who are to judge whether the fact was material, and whether the concealment were honest. As when a life-insured was a prisoner for debt, and so without the benefit of air and recreation, and this was not told; and where a woman whose life was insured had become the mother of a child under disgraceful circumstances some years before, and this fact was concealed,—the plaintiffs were non-suited, and lost the case.

If the policy, and the papers annexed or connected, put no limits on the location of the life-insured, he may go where he will. But if, when applying for insurance, he intends going to a place of peculiar danger, and this intention is wholly withheld, it would be a fraudulent concealment.

If facts be erroneously but honestly misrepresented, and the insurers, when making the policy, knew the truth, the error does not affect the policy. Nor does the non-statement of a fact which diminishes the risk.

If upon a proposal for a life insurance, and an agreement thereon, a policy be drawn up by the insurers, and presented to the insured, and accepted by them, which differs from the terms of the agreement, and varies the rights of the parties concerned, equity will interfere and deal with the case on the footing of this agreement, and not of the policy. But not if it be shown by evidence and circumstances that it was intended by the insurers to vary the agreement, and propose a different policy to the insured, and that this was understood by the insured, and the policy so accepted.

## SECTION VII.

**INSURANCE AGAINST ACCIDENT, DISEASE, AND DISHONESTY OF SERVANTS.**

Of late years, all of these forms of insurance have come into practice, but not so long or so extensively as to require that we should speak of them at length. In general, it must be true that the principles already stated, as those of insurance against fire or death, must apply to these other — and indeed to all other — forms of insurance, excepting so far as they may be qualified by the nature of the contract.

From one interesting case which has occurred in England, it seems that, when an application is made for insurance or guaranty against the fraud or misconduct of an agent, questions are proposed as we should expect, which are calculated to call forth all the various facts illustrative of the character of the agent, and all which could assist in estimating the probability of his fidelity and discretion. But a declaration of the applicant as to the course or conduct he was to pursue was distinguished from a warranty. He may recover on the policy, although he changes his course, provided the declaration was honest when made, and the change of conduct was also in good faith. In this case the application was for insurance of the fidelity of the secretary of an institution. There was a question as to when, and how often, the accounts of the secretary would be balanced and closed; and the applicant answered that these accounts would be examined by the financial committee once a fortnight. A loss ensued from the dishonesty of the secretary; and it appeared to have been made possible by the neglect of the committee or the directors to examine his accounts in the manner stated in the policy. But the insurers were held, on the ground that there was no warranty.

---

CHAPTER XXV.**BANKRUPTCY.**

The Constitution of the United States authorizes Congress to establish "uniform laws on the subject of bankruptcies throughout the United States." In 1800, a bankrupt law was passed, limited to five years; but it was repealed before it had been in operation three

years. In 1841, another bankrupt law was passed, and was repealed eighteen months afterwards. In March, 1867, another bankrupt law was passed, entitled "An act to establish a uniform system of bankruptcy throughout the United States." Several amendatory acts were passed, of which much the most important was that of 22 June, 1874. This act provides so carefully that fraud shall be prevented and justice done in all cases, and seems to be so generally useful and acceptable, that I think it will probably be permanent, and, without being repealed, will be amended from time to time as new exigencies arise, and as experience shows the need of new or different provisions. I now give an abstract of all the sections, excepting those of the greatest and most frequent practical importance, and these I give in full.

**Section 1.** Makes the several District Courts of the United States Courts of Bankruptcy, with full jurisdiction over all cases which come before them, and arose within their districts.

**Sect. 2.** The several Circuit Courts of the United States shall have a general superintendence and jurisdiction of all cases and questions arising under this act.

**Sect. 3.** Concerns the appointment of registers in bankruptcy, the manner of the appointment, and who they may be.

**Sect. 4.** Describes the powers and duties of registers, and their fees.

**Sect. 5.** Provides for the proceedings before the registers, the removal of registers by the judge of the District Court, and the filling of the vacancy.

**Sect. 6.** That the register of the parties concerned may take the opinion of the judge of the District Court in cases or upon questions where that is desired.

**Sect. 7.** Provides for the attendance of parties and witnesses when and where summoned, and for the punishment of perjury.

**Sects. 8, 9, and 10.** Relate to appeals from the District Court to the Circuit Court, and from the Circuit Court to the Supreme Court if the matter in dispute exceeds \$2,000. And gives the Supreme Court power to provide rules, orders, and forms for practice under this act.

**Sect. 11.** States how a person wishing to be made a bankrupt may proceed, and what he must do. This section I give in full.

#### VOLUNTARY BANKRUPTCY. — COMMENCEMENT OF PROCEEDINGS.

**SECT. 11.** *And be it further enacted,* That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition ad-

dressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months next immediately preceding the time of filing such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors, and his desire to obtain the benefit of this act, and shall annex to his petition a schedule, verified by oath before the court, or before a register in bankruptcy, or before one of the commissioners of the Circuit Court of the United States, containing a full and true statement of all his debts, and, as far as possible, to whom due, with the place of residence of each creditor, if known to the debtor, and, if not known, the fact to be so stated, and the sum to each creditor, also the nature of each debt or demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued, and a statement of any existing mortgage, pledge, lien, judgment, or collateral or other security given for the payment of the same; and shall also annex to his petition an accurate inventory, verified in like manner, of all his estate, both real and personal, assignable under this act, describing the same, and stating where it is situated, and whether there are any, and, if so, what incumbrances thereon, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt: *Provided*, That all citizens of the United States, petitioning to be declared bankrupt, shall, in filing such petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath shall be filed and recorded with the proceedings in bankruptcy. And the judge of the District Courts, or, if there be no opposing party, any register of said court, to be designated by the judge, shall forthwith, if he be satisfied that the debts due from the petitioner exceed three hundred dollars, issue a warrant, to be signed by such judge or register, directed to the marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies; to serve written or printed notice, by mail or personally, on all creditors upon the schedule filed with the debtor's petition, or whose names may be given to him, in addition, by the debtor, and to give such personal or other notice to any persons concerned as the warrant specifies; but whenever the creditors of the bankrupt are so numerous as to make any notice now required by law to them, by mail or otherwise, a great and disproportionate expense to the estate, the court may, in lieu thereof, in its discretion, order such notice to be given by publication in a newspaper or newspapers, to all such creditors whose claims, as reported, do not exceed the sums, respectively, of fifty dollars; which notice shall state, —

First, That a warrant in bankruptcy has been issued against the estate of the debtor.

Second, That the payment of any debts and the delivery of any property belonging to such debtor to him or for his use, and the transfer of any property by him, are forbidden by law.

Third, That a meeting of the creditors of the debtor, giving the names, residences, and amounts, so far as known, to prove their debts and choose

one or more assignees of his estate, will be held at a court of bankruptcy, to be holden at a time and place designated in the warrant, not less than ten nor more than ninety days after the issuing of the same.

**Sect. 12.** Provides for the meetings of creditors, called under the preceding section.

**Sects. 13 and 14.** Provide for the election or appointment, the duties, authority, and conduct of the assignee; determine what property shall be exempted, and what property must be transferred to the assignee. These sections I give in full.

#### ASSIGNMENTS AND ASSIGNEES.

**SECT. 13.** *And be it further enacted,* That the creditors shall, at the first meeting held after due notice from the messenger, in presence of a register designated by the court, choose one or more assignees of the estate of the debtor; the choice to be made of the greater part in value and in number of the creditors who have proved their debts. If no choice is made by the creditors at said meeting, the judge, or, if there be no opposing interest, the register, shall appoint one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or register may fill the vacancy. All elections or appointments of assignees shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election. The judge at any time may, and, upon the request in writing of any creditor who has proved his claim, shall require the assignee to give good and sufficient bond to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him, and appoint another in his place.

**SECT. 14.** *And be it further enacted,* That as soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of said proceedings: *Provided, however,* That there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessities of

such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars; and also the wearing apparel of such bankrupt, and that of his wife and children, and the uniform, arms, and equipments of any person who is or has been a soldier in the militia or in the service of the United States, and such other property as now is, or hereafter shall be, exempted from attachment or seizure, or levy on execution by the laws of the United States, and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process, or order of any court, by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such State exemption laws in force in the year eighteen hundred and seventy-one. *Provided*, That the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees, and in no case shall the property hereby excepted pass to the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court : *And provided, further*, That no mortgage of any vessel or of any other goods or chattels, made as security for any debt or debts, in good faith and for present considerations, and otherwise valid, and duly recorded, pursuant to any statute of the United States, or of any State, shall be invalidated or affected hereby; and all the property conveyed by the bankrupt in fraud of his creditors; all rights in equity, *choses in action*, patents, and patent rights and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had against any person arising from contract or from the unlawful taking or detention or of injury to the property of the bankrupt; and all his rights of redeeming such property or estate, with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might or could have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee; and he may sue for and recover the said estate, debts, and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with the like effect as they might have been presented or defended by such bankrupt; and a copy, duly certified by the clerk of the court under the seal thereof, of the assignment made by the judge or register, as the case may be, to him as assignee, shall be conclusive evidence of his title as such assignee to take, hold, sue for, and recover the property of the bankrupt, as hereinbefore mentioned; but no property held by the bankrupt in trust shall pass by such assignment. No person shall be entitled to maintain an action against an assignee in bankruptcy for any thing done by him as such assignee, without previously giving him twenty days' notice of such action, speci-



fyng the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so. No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon; and no suit in which the assignee is a party shall be abated by his death or removal from office, but the same may be prosecuted and defended by his successors, or by the surviving or remaining assignee, as the case may be. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien, or other incumbrances. The debtor shall also, at the request of the assignee, and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper, to enable the assignee to possess himself fully of all the assets of the bankrupt. The assignee shall immediately give notice of his appointment by publication, at least once a week for three successive weeks, in such newspapers as shall, for that purpose, be designated by the court, due regard being had to their general circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded; and the record of such assignment, or a duly certified copy thereof, shall be evidence thereof in all courts. The court may, in its discretion, on sufficient cause shown, and upon notice and hearing, direct the receiver or assignee to take possession of the property, and carry on the business of the debtor, or any part thereof, under the direction of the court, when, in its judgment, the interest of the estate as well as of the creditors will be promoted thereby, but not for a period exceeding nine months from the time the debtor shall have been declared a bankrupt. *Provided*, That such order shall not be made until the court shall be satisfied that it is approved by a majority in value of the creditors.

**Sect. 15.** Gives some further direction to the assignee, as to demanding, receiving, and selling the property.

**Sect. 16.** Gives directions in relation to suits by the assignee to recover debts or other effects assigned to him.

**Sect. 17.** Gives direction as to the investment by the assignee of the estate of the bankrupt; and gives him power to submit disputed demands against debtors to the estate, to arbitration, or to compound and settle them.

**Sect. 18.** Provides for death, resignation, or removal of the assignee, and filling the vacancy; and states the general duties of assignees.

**Sect. 19.** Relates to the debts of the bankrupt, payable at the time of bankruptcy; and also his debts payable at a future time. This section I give in full.

SECT. 19. *And be it further enacted*, That all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted, or withheld by him, may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. If the bankrupt shall be bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, and his liability shall not have become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared. In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt or any part thereof in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor if he shall have proved the same, although such payments shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of said debt, but is still liable for the same or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules, and subject to such regulations and limitations as may be established by such rules. Where the bankrupt is liable to pay rent, or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods. If any bankrupt shall be liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate. No debts other than those above specified shall be proved or allowed against the estate.

**Sect. 20.** Relates to mutual debts and set-offs; that the balance shall be struck.

**Sect. 21.** Prohibits a creditor who proves his debt from bringing any action against the bankrupt, unless a discharge has been refused or withheld.

**Sect. 22** Provides for proof of debts of the creditors of the bankrupts, whether individuals or corporations. It must be by oath or solemn affirmation, and other and further evidence if it be required. This proof may be made before a commissioner, and sent by him to the assignee. Debts or claims not duly and sufficiently proved are to be rejected.

**Sect. 23.** Provides for proof of debts before assignee is chosen; declares no creditor who has received any preference or advantage from the bankrupt shall receive any dividend unless he surrenders the preference or advantage, of whatever kind it may be, to the assignee.

**Sect. 24.** Provides for appeal from District Court to Circuit Court from a decision rejecting his claim.

**Sect. 25.** Court may order perishable property, or property to which right is disputed, to be sold.

**Sect. 26.** Relates to the attendance of bankrupts, and the examination of them, and their duties and rights. This section I give in full.

**SECT. 26.** *And be it further enacted,* That the court may, on the application of the assignee in bankruptcy, or of any creditor, or without any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law, which examination shall be in writing, and shall be signed by the bankrupt and be filed with the other proceedings; and the court may, in like manner, require the attendance of any other person as a witness, and if such person shall fail to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person, and bring him forthwith before the court, or before a register in bankruptcy, for examination as such witness. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailer, or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified, at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been in court. The bankrupt shall at all times, until his discharge, be subject to the order of the court, and shall, at the expense of the estate, execute all proper writings and instruments, and do and perform all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated; and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for a contempt of court. If the bankrupt is without the district, and un-

able to return and personally attend at any of the times, or do any of the acts which may be specified or required pursuant to this section, and if it appears that such absence was not caused by wilful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default. He shall also be at liberty, from time to time, upon oath, to amend and correct his schedule of creditors and property, so that the same shall conform to the facts. For good cause shown, *the wife* of any bankrupt may be required to *attend* before the court, to the end that she may be examined as a witness; and if such wife do not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he shall prove to the satisfaction of the court that he was unable to procure the attendance of his wife. No bankrupt shall be liable to arrest during the pendency of the proceedings in bankruptcy in any civil action, unless the same is founded on some debt or claim from which his discharge or bankruptcy would not release him. In all causes and trials arising or ordered under this act, the alleged bankrupt, and any party thereto, shall be a competent witness.

**Sect. 27. Relates to the distribution of the bankrupt's estate.**  
This section I give in full.

#### THE DISTRIBUTION OF THE BANKRUPT'S ESTATE.

SECT. 27. *And be it further enacted,* That all creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate *pro rata*, without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house-servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full: *Provided*, That any debt proved by any person liable as bail, surety, guarantor, or otherwise, for the bankrupt, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct. At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon the request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall produce and file vouchers for all payments for which vouchers shall be required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, also what debts or claims are yet undetermined, and stating what sum

remains in his hands. At such meeting the majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims, which, by reason of the distant residence of the creditor, or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors shall attend such meeting, either in person or by attorney, it shall be the duty of the assignee so to determine. In case a dividend is ordered, the register shall, within ten days after such meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward by mail to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.

**Sect. 28. Relates to subsequent meetings of the creditors, dividends, compensation of assignee, and order of dividend and payment from bankrupt's estate. This section I give in full.**

SECT. 28. *And be it further enacted*, That the like proceedings shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of creditors shall then be called by the court, and a final dividend then declared, unless any action at law or suit in equity be pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted, the same shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors, no further meeting shall be called, unless ordered by the court. If at any time there shall be in the hands of the assignee any outstanding debts or other property, due or belonging to the estate, which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, the assignee may, under the direction of the court, sell and assign such debts or other property in such manner as the court shall order. No dividend already declared shall be disturbed by reason of debts being subsequently proved; but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter. Preparatory to the final dividend, the assignee shall submit his account to the court, and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice; and at such time the court shall audit and pass the accounts of the assignee, and such assignee shall, if required by the court, be examined as to the truth of such account, and, if found correct, he shall thereby be discharged from all liability as assignee to any creditor of the

bankrupt. The court shall thereupon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their said debts. In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case, on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars; and if, at any time, there shall not be in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him. If, by accident, mistake, or other cause, without fault of the assignee, either or both of the said second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held. In the order for a dividend, under this section, the following claims shall be entitled to priority or preference, and to be first paid in full in the following order : —

*First*, The fees, costs, and expenses of suits, and the several proceedings in bankruptcy under this act, and for the custody of property, as herein provided.

*Second*, All debts due to the United States, and all taxes and assessments under the laws thereof.

*Third*, All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws of such State.

*Fourth*, Wages due to any operative, clerk, or house-servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

*Fifth*, All debts due to any persons who, by the laws of the United States, are or may be entitled to a priority or preference, in like manner as if this act had not been passed : *Always provided*, That nothing contained in this act shall interfere with the assessment and collection of taxes by the authority of the United States or any State.

**Sects. 29, 30, 31, 32, 33, and 34. Relate to the discharge of the bankrupt, and its effect. These sections I give in full.**

#### THE BANKRUPT'S DISCHARGE AND ITS EFFECT.

**SECT. 29.** *And be it further enacted*, That at any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and

within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given by mail to all creditors who have proved their debts, and *by publication* at least once a week in such newspapers as the court shall designate, due regard being had to the general circulation of the same in the district, or in that portion of the district in which the bankrupt and his creditors shall reside, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt. No discharge shall be granted, or, if granted, be valid, if the bankrupt has wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact concerning his estate or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writings relating thereto, or if he has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof; or if, within four months before the commencement of such proceedings, he has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution; or if, since the passage of this act, he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors; or if he has given any fraudulent preference contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate; or if, having knowledge that any person has proved such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not, subsequently to the passage of this act, kept proper books of account; or if he, or any person in his behalf, has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation; or if he has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; or if he has been convicted of any misdemeanor under this act, or has been guilty of any fraud whatever contrary to the true intent of this act; and before any discharge is granted, the bankrupt shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter.

or thing specified in this act as a ground for withholding such discharge, or as invalidating such discharge if granted.

SECT. 30. *And be it further enacted*, That no person who shall have been discharged under this act, and shall afterwards become bankrupt, *on his own application*, shall be again entitled to a discharge whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge; but a bankrupt who shall prove to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

SECT. 31. *And it is further enacted*, That any creditor opposing the discharge of any bankruptcy may file a specification in writing of the grounds of his opposition, and the court may, in its discretion, order any question of fact so presented to be tried at a stated session of the District Court.

SECT. 32. *And be it further enacted*, That if it shall appear to the court that the bankrupt has in all things conformed to his duty under this act, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts, except as herein-after provided, and shall give him a certificate thereof under the seal of the court, in substance as follows :—

District Court of the United States.	District of	Whereas
has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said		be for ever discharged
from all debts and claims which by said act are made provable against his estate, and which existed on the	day of	on which day
the petition for adjudication was filed by (or against) him; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy. Given under my hand and the seal of the court at		
in the said district, this	day of	A.D.
(Seal.)	.	Judge.

SECT. 33. *And be it further enacted*, That no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged under this act; but the debt may be proved, and the dividend thereon shall be a payment on account of said debt; and no discharge granted under this act shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety, or otherwise. And in cases of *voluntary bankruptcy*, no discharge shall be granted to a debtor whose assets shall not be equal to *thirty* per centum of the claims proved against his estate, upon which he shall be liable as principal debtor, without the assent of at least one-fourth of his creditors in number, and one-third in value.



SECT. 34. *And be it further enacted*, That a discharge duly granted under this act shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded, by a simple averment that on the day of its date such discharge was granted to him, setting the same forth *in hæc verba*, as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and the regularity of such discharge: *Always provided*, That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained, may, at any time within [two years] after the date thereof, apply to the court which granted it to set aside and annul the same. Said application shall be in writing, shall specify which, in particular, of the several acts mentioned in section twenty-nine it is intended to give evidence of against the bankrupt, setting forth the grounds of avoidance, and no evidence shall be admitted as to any other of the said acts; but said application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of said application to be given to said bankrupt, and order him to appear and answer the same, within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt, are proved, and that said creditor or creditors had no knowledge of the same until after the granting of said discharge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled.

**Sect. 35. Relates to fraudulent conveyances or transfers by the bankrupt, declares them to be void, and defines what are such conveyances or transfers. This section I give in full.**

#### PREFERENCES AND FRAUDULENT CONVEYANCES DECLARED VOID.

SECT. 35. *And be it further enacted*, That if any person being insolvent, or in contemplation of insolvency, within two months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it,

or so to be benefited ; and if any person being insolvent, or in contemplation of insolvency or bankruptcy, within three months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance, is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, the fact shall be *prima facie* evidence of fraud. Any contract, covenant, or security made or given by a bankrupt or other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt, shall be void; and if any creditor shall obtain any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained, to be recovered by the assignee for the benefit of the estate. Nothing in this section thirty-five shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith on the occasion of the making of such loan.

**Sects. 36 and 37.** Relate to the bankruptcy of partnerships or corporations, and apply to them the provisions of this act.

**Sect. 38.** Provides that the filing of the petition for bankruptcy shall be taken as the beginning of the proceedings, and also for the taking of testimony by depositions.

**Sect. 39.** Relates to what is called involuntary bankruptcy, or bankruptcy on the petition of a creditor. This section has been materially changed by statute of 1874. I give it in full, as it now stands.

#### INVOLUNTARY BANKRUPTCY.

**SECT. 39.** *And be it further enacted,* That any person residing and owing debts as aforesaid, who, after the passage of this act, shall depart from the State, district, or Territory, of which he is an inhabitant, with intent to defraud his creditors, or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal and remove any of his property to avoid its being attached, taken,

or sequestered on legal process; or shall make any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process of execution, issued out of any court of any State, district, or Territory, within which such debtor resides or has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of such State, district, or Territory applicable thereto, for a period of twenty days; or has been actually imprisoned for more than twenty days in a civil action, founded on contract, for the sum of one hundred dollars or upwards; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or give any warrant to confess judgment, or procure or suffer his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment; or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has stopped or suspended and not resumed payment, within a period of forty days, of his commercial paper (made or passed in the course of his business as such); or who, being a bank or banker, shall fail for forty days to pay any depositor upon demand of payment lawfully made, — shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth thereof, at least, in number, and the aggregate of whose debts provable under this act amounts to at least one-third of the debts so provable: *Provided*, That such petition is brought within six months after such act of bankruptcy shall have been committed. And the provisions of this section shall apply to all cases of compulsory or involuntary bankruptcy commenced since the first day of December, eighteen hundred and seventy-three, as well as to those commenced hereafter. And in all cases commenced since the first day of December, eighteen hundred and seventy-three, and prior to the passage of this act, as well as those commenced hereafter, the court shall, if such allegation as to the number or amount of petitioning creditors be denied by the debtor, by a statement in writing to that effect, require him to file in court forthwith a full list of his creditors, with their places of residence and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount thereof, as aforesaid, have petitioned that the debtor be adjudged a bankrupt. But if such debtor shall, on the filing of the petition, admit in writing that the requisite number and amount of creditors have petitioned, the court, if satisfied that the admission was made in good faith, shall so adjudge, which

judgment shall be final, and the matter proceed without further steps on that subject. And if it shall appear that such number and amount have not so petitioned, the court shall grant reasonable time, not exceeding, in cases heretofore commenced, twenty days, and, in cases hereafter commenced, ten days, within which other creditors may join in such petition. And if, at the expiration of such time so limited, the number and amount shall comply with the requirements of this section, the matter of bankruptcy may proceed; but if, at the expiration of such limited time, such number and amount shall not answer the requirements of this section, the proceedings shall be dismissed, and, in cases hereafter commenced, with costs. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or property so paid, conveyed, sold, assigned, or transferred contrary to this act: *Provided*, That the person receiving such payment or conveyance had reasonable cause to believe that the debtor was insolvent, and knew that a fraud on this act was intended; and such person, if a creditor, shall not, in cases of actual fraud on his part, be allowed to prove for more than a moiety of his debt; and this limitation on the proof of debts shall apply to cases of voluntary as well as involuntary bankruptcy. And the petition of creditors under this section may be sufficiently verified by the oaths of the first five signers thereof, if so many there be. And if any of said first five signers shall not reside in the district in which such petition is to be filed, the same may be signed and verified by the oath or oaths of the attorney or attorneys, agent or agents, of such signers. And in computing the number of creditors, as aforesaid, who shall join in such petition, creditors whose respective debts do not exceed two hundred and fifty dollars shall not be reckoned. But if there be no creditors whose debts exceed said sum of two hundred and fifty dollars, or if the requisite number of creditors holding debts exceeding two hundred and fifty dollars fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid.

**Sects. 40, 41, and 42. Regulate the proceedings under such a petition.**

**Sect. 43. Relates to the superseding of the proceedings in bankruptcy, by placing the property in the hands of trustees, if three-fourths in value of the creditors desire it. This section I give in full.**

#### OF SUPERSEDING THE BANKRUPT PROCEEDINGS BY ARRANGEMENT.

**SECT. 43.** *And be it further enacted*, That if at the first meeting of creditors, or at any meeting of creditors to be specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner as the court may direct, three-fourths in value of the creditors whose claims have been proved shall determine and resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt should be wound up and settled, and distribution made among the creditors by trustees, under the inspection and direction

of a committee of the creditors, it shall be lawful for the creditors to certify and report such resolution to the court, and to nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it shall appear to the court, after hearing the bankrupt and such creditors as may desire to be heard, that the resolution was duly passed and that the interests of the creditors will be promoted thereby, it shall confirm the same; and upon the execution and filing, by or on behalf of three-fourths in value of all the creditors whose claims have been proved, of a consent that the estate of the bankrupt be wound up and settled by said trustees, according to the terms of such resolution, the bankrupt, or his assignee in bankruptcy, if appointed, as the case may be, shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the said trustee or trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken; or as the assignee in bankruptcy would have done had such resolution not been passed; and such consent and the proceedings thereunder shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor whose debt, if provable, is not proved, as if he had proved it; and the court, by order, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors; and the said trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors, and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy under this act; and the said trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such trustees, shall have power to summon and examine, on oath or otherwise, the bankrupt, and any creditor, and any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust, and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy under this act; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had continued in the manner provided in the preceding sections of this act. If the resolution shall not be duly reported, or the consent of the creditors shall not be duly filed, or if, upon its filing, the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for resuming the proceedings shall not be reckoned in calculating periods of time prescribed by this act.

## COMPOSITION WITH CREDITORS.

That in all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to each known creditor of the time, place, and purpose of such meeting, such notice to be personal or otherwise, as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor. And such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor, assembled at such meeting either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding fifty dollars shall be reckoned in the majority in value, but not in the majority in number; and the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be estimated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or to sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he, or, if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

Such resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the court; and the court shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, inquire whether such resolution has been passed in the manner directed by this section; and if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded, and statement of assets and debts to be filed; and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

The creditors may, by resolution passed in the manner and under the circumstances aforesaid, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions, who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner, and proceeded with in the same way, and with the same consequences, as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolu-

tion in pursuance of this section, shall be binding on all the creditors whose names and addresses, and the amounts of the debts due to whom, are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertently by a debtor in the statement of his debts may be corrected upon reasonable notice, and with the consent of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a *pro rata* payment or satisfaction, in money, to the creditors of such debtor, in proportion to the amount of their unsecured debts, or their debts in respect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for, in the same manner and to the same extent as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to the court, on notice, satisfactory evidence, and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition, or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt, in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not, in such case, be computed in calculating periods of time prescribed by said act.

**Sect. 44.** Provides that debtors, who, after the commencement of proceedings in bankruptcy (which means the filing of the petition), fraudulently conceal any property, or hinder the assignee from getting hold of it, or spend any part of it in gaming, or, within three months next before the petition, dispose of any property otherwise than by honest transactions in his trade, which property was bought on credit and is unpaid for, shall be punished by imprisonment not exceeding three years.

**Sect. 45.** Provides that defaulting officers shall be punished by a fine not less than three hundred nor more than five hundred dollars, and imprisonment not more than three years.

**Sect. 46.** Provides that forgery or counterfeiting of any court seal, any court paper, or the tendering for use of any document so forged or counterfeited, shall be punished by a fine not less than five hundred nor more than five thousand dollars, and imprisonment not exceeding five years.

**Sect. 47.** Relates to fees and costs of proceedings; and the act of 22 June, 1874, provided that the fees, commissions, charges, &c., shall be reduced to one-half of those heretofore allowed, until the Supreme Court of the United States shall make new orders and regulations about them.

**Sect. 48.** Gives the meaning and definition of sundry words used in the act.

**Sect. 49.** Gives jurisdiction in cases of bankruptcy to the Supreme Court of the District of Columbia and of the several Territories, when the bankrupt resides therein.

**Sect. 50.** Declares that the act goes into force when approved.

The various forms required are not given here, because they have been issued on the authority of the Supreme Court of the United States, and are uniform throughout the States, and are supplied by the registers of bankruptcy to every applicant; and to one of them every person proposing to become a bankrupt, and every person desiring to bring another person into bankruptcy, must apply.

---

## CHAPTER XXVI.

### LIMITATIONS.

#### SECTION I.

#### THE STATUTE OF LIMITATIONS.

**All of our States have what is called a statute of limitations.** It is not exactly the same everywhere; but generally it enacts that all actions of account, and all which are brought for indebtedness or damages, and all actions of debt grounded upon any lending, or contract without seal, and all actions for arrearages of rent, shall



be commenced and sued within six years next after the cause of such actions or suit arises, and not after. In few words, all claims which do not rest on a seal or a judgment must be sued within six years from the time when they arise. If they rest on a seal or a judgment, they can usually be sued at any time within twenty years.

In some States, a statute provides, in substance, that if a debt or promise be once barred by the statute of limitations, no acknowledgment of the debt or new promise shall renew the debt and take away the effect of the statute, unless the new promise is in writing, and is signed by the party who makes the promise. But this statute expressly permits a part-payment either of principal or interest of the old debt to have the same effect as a new promise. And this statute also provides that if there be joint contractors or debtors, and a plaintiff is barred by the statute against both, but the bar of the statute is removed as to one by a new promise or otherwise, the plaintiff may have judgment against this one, but not against the other.

Such statutes have been passed in Maine, Massachusetts, Vermont, New York, Indiana, Michigan, Arkansas, and California.

## SECTION II.

### CONSTRUCTION OF THE STATUTE.

For the law of limitation there is a twofold foundation: in the first place, the actual probability that a debt which has not been claimed for a long time was paid, and that this is the reason of the silence of the creditor. But, besides this reason, there is the expediency and injustice of permitting a stale and neglected claim or debt, even if it has not been paid, to be set up and enforced after a long silence and acquiescence.

Before inquiring into the rules of law which now apply to the case of an acknowledgment or new promise, it should be remarked that a prescription, or limitation, of common law, much more ancient than the statutes above quoted, is still in full force. This is the presumption of payment after twenty years, which is applicable to all debts: not only the simple contracts to which the statutes of limitation refer, that is, contracts which are merely oral, or which if written have no seal, but to specialties, or contracts or debts under seal or by judgment of court. Of these it will not be necessary to speak here, excepting to remark that in a few of our States the statute of limitation excepts a promissory note which is signed in the presence of an attesting witness, and is put in suit by the original payee, or his executor or administrator; such a note in

those States, as in Maine and Massachusetts, may be sued any time within twenty years after it is due. Bank-bills and other evidences of debt issued by banks, are everywhere excepted from the operation of the statute of limitations.

### SECTION III.

#### THE NEW PROMISE.

**In those States which do not require that the new promise should be in writing, any new promise, although merely oral, takes the case out of the statute. But many questions have arisen as to what this new promise must be. A mere acknowledgment, which does not contain, by any reasonable implication or construction, a new promise, is not sufficient, and still less so if it expressly excludes a new promise. In the leading American case upon this point, before the Supreme Court of the United States, it was proved, in answer to the plea of the statute of limitations, that the defendant, one of the partners of a firm then dissolved, said to the plaintiff, "I know we are owing you;" "I am getting old, and I wish to have the business settled:" it was held that these expressions were insufficient to revive the debt. So, in New Hampshire, in an action on a promissory note, the defendant, on being asked to pay the note, said, "he guessed the note was outlawed; but that would make no difference, he was willing to pay his honest debts always." As he did not state in direct terms that he was willing to pay the note, this was held not sufficient to revive the debt. A new promise is not now implied by the law itself, from a mere acknowledgment.**

**The new promise need not define the amount of the debt. That can be done by other evidence, if only the existence of the debt and the purpose of paying it are acknowledged. Still, the new promise must be of the specific debt, or must distinctly include it; for if wholly general and undefined, it is not enough. A testator who provides for the payment of his debts generally, does not thereby make a new promise as to any one of them.**

**If the new promise is conditional, the party relying upon it must be prepared to show that the condition has been fulfilled. Thus, if the new promise be to pay "when I am able," the promisee must prove not only the promise, but that the promisor is able to pay the debt.**

**As the acknowledgment should be voluntary, it follows that one made under process of law, as by a bankrupt, or by answers to interrogatories which could not be avoided, should never have the effect of a new promise.**

## SECTION IV.

**PART-PAYMENT.**

A part-payment of a debt is such a recognition of it as implies a new promise; even if it was made in goods or chattels, if they were offered as payment and agreed to be received as payment, or by negotiable promissory note or bill. Thus, in a case where one was sued for money due for a quantity of hay, and pleaded that it had been due more than six years, which was a good defence, the plaintiff proved in reply that defendant had given him within six years a gallon of gin as part-payment for his debt; and it was held that this took the case out of the statute of limitations, and the plaintiff recovered. But a payment has this effect only when the payment is made as of a part of a debt. If it is made in settlement of the whole, of course it is no promise of more. And a bare payment, without words or acts to indicate its character as a part-payment, would not be construed as carrying with it an acknowledgment that more was due and would be paid.

If a debtor owes several debts, and pays a sum of money, he has the right of appropriating that money to one debt or another as he pleases. If he pays it without indicating his own appropriation, the general rule is, that the creditor who receives the money may appropriate it as he will. There is, however, this exception: if there be two or more debts, some of which are barred by the statute, and others are not barred by it, the creditor cannot appropriate the payment to a debt that is barred, for the purpose of taking it out of the statute by such part-payment. (See Section 2 of Chapter XVI.)

## SECTION V.

**SOME STATUTORY EXCEPTIONS.**

The original English statute of limitation, which those in this country are taken from, also provides that if a creditor, at the time when the cause of action accrues, is a minor, or a married woman, or not of sound mind, or imprisoned, or beyond the seas, the six years do not begin to run; and he may bring his action at any time within six years after such disability ceases to exist. And, also, if any person against whom there shall be a cause of action, shall, when such cause accrues, be beyond the seas (which means out of the country, and here, out of the State), the action may be brought at any time within six years after his return. Similar exceptions and disabilities are usually contained in our own statutes.

The effect of these is, that the disability must exist when the debt accrued; and then, so long as the disability continues to exist, the statute does not take effect. But it is a general rule that, if the six years begin to run, they go on without any interruption or suspension from any subsequent disability. Thus, if a creditor be of sound mind, or a debtor be at home, when the debt accrues, and one month afterwards the creditor becomes insane, or the debtor leaves the country, nevertheless the six years go on, and after the end of that time no action can be commenced for the debt. Or if the disability exists when the debt accrues, and some months afterwards ceases, so that the six years begin to run when it ceases, and afterwards the disability comes again, it does not interrupt the six years.

The effect of this is, that if, when a debt is due, the debtor is out of the State, the six years do not begin to run. If afterwards he returns to the State, they then begin to run; and, having begun, they continue to run, although he goes out of the State again, and returns no more.

In this country, a rational construction has been given to the disability of being out of the State, and its removal; and it is not understood to be terminated merely by a return of the debtor for a few days, if during those days he was not within reach. If, however, the creditor knew that he had returned, or might have known it by the exercise of reasonable care and diligence, soon enough to have profited by it, this removal of the disability brings the statute into operation, although the return was for a short time only.

## SECTION VI.

### WHEN THE PERIOD OF LIMITATION BEGINS.

It is sometimes a question from what point of time the six years are to be counted. And the general rule is, that they begin when the action might have been commenced. If a credit is given, this period does not begin until the credit has expired. If a note on time be given, the six years do not begin until the time has expired, including the additional three days of grace. If a bill of exchange be given, payable at sight, then the six years begin after presentment and demand; but if a note be payable on demand, or money is payable on demand, then the limitation begins at once, because there may be an action at once. If there can be no action until a previous demand, the limitation begins as soon as the demand is made. If money be payable on the happening of any event, then

the limitation begins when that event has happened. If several successive credits are given, as if a note is given which is to be renewed; or if a credit is given, and then a note is to be given; or if the credit is longer or shorter at the purchaser's option, as if it be agreed that a note shall be given at two or four months,—then the six years begin when the whole credit or the longer credit has expired.

#### SECTION VII.

#### THE STATUTE DOES NOT AFFECT COLLATERAL SECURITY.

It is important to remember that the statute of limitations does not avoid or cancel the debt, but only provides that “no action shall be maintained upon it” after a given time. Therefore, it does not follow that no right can be sustained by the debt, although the debt cannot be sued. Thus, if one who holds a common note of hand, on which there is a mortgage or pledge of real or of personal property, without valid excuse neglects to sue the note for more than six years, he can never bring an action upon that note; but the pledge or mortgage is as valid and effectual as it was before; and, as far as it goes, his debt is secure; and for the purpose of realizing this security, by foreclosing a mortgage, for example, he may have whatever process is necessary, although he cannot sue the note itself. And the debtor cannot redeem the property pledged or mortgaged except by payment of the debt.

---

### CHAPTER XXVII.

### INTEREST AND USURY.

#### SECTION I.

#### WHAT INTEREST IS, AND WHEN IT IS DUE.

Interest means a payment of money for the use of money. In most civilized countries the law regulates this; that is, it declares how much money may be paid or received for the use of money; and this is called legal interest; and if more is paid or agreed to be paid than is thus allowed, it is called usurious interest. By interest is commonly meant legal interest; and by usury, usurious interest.

Interest may be due, and may be demanded by a creditor, on either of two grounds. One, a bargain to that effect; the other, by way of damages for withholding money that is due. Indeed, it may be considered as now the settled rule, that wherever money is withheld which is certainly due, the debtor is to be regarded as having promised legal interest for the delay. And upon this implication, as on most others, the usage of trade, and the customary course of dealings between the parties, would have great influence.

Thus, in New York, it was held that, where it was known to one party that it was the uniform custom of the other to charge interest upon articles sold or manufactured by him after a certain time, the latter was allowed to charge interest accordingly.

In general, we may say that interest is allowed by law as follows: on a debt due by judgment of court, it is allowed from the rendition of judgment; and on an account that has been liquidated, or the balance ascertained, from the day of the liquidation; for goods sold, from the time of the sale, if there be no credit, and if there be, then from the day when the credit expires; for rent, from the time that it is due, and this even if the rent is payable otherwise than in money, but is not so paid; for money paid for another or lent to another, it begins from the payment or loan.

Interest is not generally recoverable upon claims for unliquidated damages, nor in actions founded on tort. By *unliquidated damages* is meant damages not agreed on, and of an uncertain amount, and which the jury must determine. By *torts* is meant wrongs, or injuries inflicted. But although interest cannot be given under that name, in actions of this sort, juries are sometimes at liberty to consider it in estimating the damages.

It sometimes happens that money is due, but not now payable; and then the interest does not begin until the money is payable. As if a note be on demand, the money is always due, but it is not payable until demand; and therefore is not on interest until demand. But a note payable at a certain time, or after a certain period, carries interest from that time, whether it be demanded or not.

The laws which regulate interest and prohibit usury are very various, and are not perhaps precisely the same in any two of our States. Formerly usury was looked upon as so great an offence, that the whole debt was forfeited thereby. The law now, however, is—generally, at least—much more lenient. The theory that money is like any merchandise, worth what it will bring and no more, and that its value should be left to fix itself in a free market, appears to be gaining ground. In many States there are frequent efforts so to change the statutes of usury that parties may make any

bargain for the use of money which suits them ; but when they make no bargain, the law shall say what is legal interest. And, generally, the forfeiture is now much less than the whole debt.

At the close of this chapter will be found a statement of the usury laws of the States.

There is no especial form or expression necessary to make a bargain usurious. It is enough for this purpose if there be a substantial payment, or promise of payment, of more than the law allows, either for the use of money lent, or for the forbearance of money due and payable. One thing, however, is certain: there must be a usurious intention, or there is no usury. That is, if one miscalculates, and so receives a promise for more than legal interest, the error may be corrected, the excess waived, and the whole legal interest claimed. But if one makes a bargain for more than legal interest, believing that he has a right to make such a bargain, or that the law gives him all that he claims, this is a mistake of law, and does not save the party from the effect of usury.

It may be well to remark, that the law makes a very wide distinction between a *mistake of fact* and a *mistake of law*. Generally, it will not permit a party to be hurt by a mistake of fact ; but it seldom suffers any one to excuse himself by a mistake of law, because it holds that everybody should know the law, and because it would be dangerous to permit ignorance of the law to operate for any one's benefit.

The question has been very much discussed, whether the use of the common tables, which are calculated on the supposition that a year consists of 365 days, is usurious. In New York, it has been held that it is ; but in Massachusetts, and some other States, it is held that the use of such tables does not render the transaction usurious. We think this latter the better opinion.

If a debtor requests time, and promises to pay for the forbearance legal interest, and as much more as the creditor shall be obliged to pay for the same money, this is not a usurious contract. And, even if usurious interest be actually taken, this, although strong evidence of an original usurious bargain and intent, is not conclusive, but may be rebutted by adequate proof or explanation.

When a statute provides that a usurious contract is wholly void, such a contract cannot become good afterwards ; and therefore a note which is usurious, if it be therefore void by law in its inception, is not valid in the hands of an innocent indorsee. But it is otherwise where the statute does not declare the contract void on account of the usury. If a note, or any securities for a usurious bargain, be delivered up by the creditor and cancelled, and the

debtor thereupon promises to pay the original debt and lawful interest, this promise is valid.

New securities for old ones which are tainted with usury are equally void with the old ones, or subject to the same defence. Not so, however, if the usurious part of the original securities be expunged, and not included in the new; or if the new ones are given to third parties, who were wholly innocent of the original usurious transaction. And if a debtor suffers his usurious debt to be sued, and a judgment recovered against him for the whole amount, it is then too late for him to take any advantage of the usury.

So, if land or goods be mortgaged to secure a usurious debt, and afterwards conveyed to an innocent party, subject to such mortgage, the latter cannot set up the defence of usury, and thereby defeat an action to enforce the mortgage.

Usurers resort to many devices to conceal their usury; and sometimes it is very difficult for the law to reach and punish this offence. A common method is for the lender of money to sell some chattel, or a parcel of goods, at a high price, the borrower paying this price in part as a premium for the loan. In England, it would seem from the reports to be quite common for one who discounts a note to make the discount nominally at legal rates, but to furnish a part of the amount in goods at a very high valuation. In all cases of this kind, or rather in all cases where questions of this kind arise, the court endeavors to ascertain the real character of the transaction. Such a transaction is always suspicious, for the obvious reason that one who wants to borrow money is not very likely to desire at the same time to buy goods at a high price. But the jury decide all questions of this kind; and it is their duty to judge of the actual intention of the parties from all the evidence offered. If that intention is substantially that one should loan his money to another, who shall therefor, in any manner whatever, pay to the lender more than legal interest, it is a case of usury. "Where the real truth is a loan of money," said Lord Mansfield, "the wit of man cannot find a shift to take it out of the statute." If this great judge meant only that, whenever legal evidence shows the transaction to be a usurious loan, the law pays no respect whatever to any pretence or disguise, this is certainly true. But the wit of man does undoubtedly devise many "shifts," which the law cannot detect. There seems to be a general rule in these cases in reference to the burden of proof; the borrower must first show that he took the goods on compulsion; and then it is for the lender to prove that no more than their actual value was received or charged for them.

If one should borrow stock at a valuation much above the market rate, and agree to pay interest on this value for the use of the stock to sell or pledge, this would be usurious.



One may lend his stock, and may, without usury, give the borrower the option to replace the stock, or to pay for it at even a high value, with interest. But, if he reserves this option to himself, the bargain is usurious, because it gives the lender the right to claim more than legal interest. So, the lender may reserve either the dividends or the interest, if he elects at the time of the loan; but he cannot reserve the right of electing at a future time, when he shall know what the dividends are.

A contract may seem to be two, and yet be but one, if the seeming two are but parts of a whole. Thus, if A borrows one thousand dollars, and gives a note promising to pay legal interest for it, and then gives another note for (or otherwise promises to pay) a further sum, in fact for no consideration but the loan, this is all one transaction, and it constitutes a usurious contract.

If, after a payment has been made, which discharged all legal obligation, the payer voluntarily adds a gift, this would not be usurious. And if there be a loan on legal terms, with no promise or obligation on the part of the borrower to pay any more, this might not be invalidated by a mere understanding that the borrower should, when the money was paid by him, make a present to the lender for the accommodation. But in every such case the question for a jury is, What was this additional transfer of money, in fact; was it a voluntary gift, or was it the payment of a debt? If an honest gift, it was not usurious; if a payment, it was usurious.

A foreign contract, valid and lawful where made, may be enforced in a State in which such a contract, if made there, would be usurious. But if usurious where it was made, and, by reason of that usury, wholly void in that State, if it is put in suit in another State where the penalty for usury is less, it cannot be enforced under this mitigated penalty; but it is wholly void there also.

## SECTION II.

### A CHARGE FOR RISK OR FOR SERVICE.

It is undoubtedly lawful for a lender to charge an extra price for the risk he incurs, provided that risk be perfectly distinct and different from the merely personal risk of the debtor's being unable to pay. If any thing is paid for this last risk, it is certainly usury.

So, one may charge for services rendered, for brokerage, or for rate of exchange, and may even cause a domestic loan or discount to be actually converted into a foreign one, so as to charge the exchange; and this would not be usurious. But here, as before, and indeed throughout the law of usury, it is necessary to remember

that the actual intention, and not the apparent purpose or form of the transaction, must determine its character. So, if one lends money to be used in business, and lends it upon such terms that he becomes a partner in fact with those who use it, taking his share of the profits, and becoming liable for the losses, this is not usurious.

**So, if one enters into a partnership, and provides money for its business, and the other party is to bear all the losses, and also to pay the capitalist more than legal interest as his share of the profits, this is not usurious, because there is no loan, if there be in fact a partnership; for then there is a very important risk, as he becomes liable for all the debts of the partnership.**

**The banks always get more than legal interest by their way of discounting notes and deducting the whole interest from the amount they give. This is perfectly obvious if we take an extreme case; as if a bank discounted a note of a thousand dollars at fifteen years, in Massachusetts, when the legal interest was six per cent, the bank would discount the interest of all the fifteen years; the borrower would receive one hundred dollars, and at the end of fifteen years he would pay back one thousand dollars, which is equivalent to paying nine hundred dollars for the use of one hundred for fifteen years, whereas the legal interest would be but ninety dollars. But this method is now established by usage and sanctioned by law. It should, however, be confined to discounts of negotiable paper, not having a very long time to run. For the rule is founded upon usage, and the usage goes no further.**

### SECTION III.

#### THE SALE OF NOTES.

**There are, perhaps, no questions in relation to interest and usury of more importance than those which arise from the sale of notes or other securities. In the first place, there is no doubt whatever that the owner of a note has as good a right to sell it for the most he can get, as he has to sell any goods or wares which he owns. There is here no question of usury, because there is no loan of money nor forbearance of debt. But, on the other hand, it is quite as certain that if any person makes his own note, and sells that for what he can get, this, while in appearance the sale of a note, is in fact the giving of a note for money. It is a loan and a borrowing, and nothing else. And if the apparent sale be for such a price that the seller pays more than legal interest, or, in other words, if the note bear interest and is sold for less than its face, or is not on**

interest, and more than interest is discounted, it is a usurious transaction. Supposing these two rules to be settled, the question in each case is, Under which of them does that case come, or to which of them does it draw nearest?

We are not aware of any general principle so likely to be of use in determining these questions as this: if the seller of a note acquired it by purchase, or if it is his for money advanced or lent by him to its full amount, he may sell it for what he can get; but if he be the maker of the note, or the agent of the maker, and receives for the note less than would be paid him if a lawful discount were made, it is a usurious loan. In other words, the first holder of a note (and the maker of a note is not and cannot be its first holder) must pay to the maker the face of the note, or its full amount. And after paying this, he may sell it, and any subsequent purchaser may sell it, as merchandise. The same rule must apply to corporations, and all other bodies or persons who issue their notes or bonds on interest. If sold by brokers for them, for less than the full amount, it is usurious. Nor can such notes come into the market free from the taint and the defence of usury, unless the first party who holds them pays for them their full value.

But then comes another question. If a note be offered for sale, and be sold for less than its face, and the purchaser supposes himself to buy it from an actual holder and not from the maker, can the maker interpose the defence that it was actually usurious, on the ground that the seller was only his agent? I should say that he could not; that there can be no usury unless this is intended; and that the guilty intention of one party cannot affect another party who was innocent.

I should say, also, that one who, having no interest in a note, indorses or guarantees it for a certain premium, will be liable for the amount it promises; he does not now add his credit to the value of his property and sell both together, as where he indorses a note which he holds himself, but sells his credit alone. This transaction I should not think usurious. And if it was open to no other defence, as fraud, for example, and was in fact what it purported to be, and not a mere cover for a usurious loan, we know no good reason why such indorser or guarantor should not be held liable to the full amount of his promise.

## SECTION IV.

## COMPOUND INTEREST.

Compound interest is sometimes said to be usurious; but it is not so; and even those cases which speak of it as "savoring of usury" may be thought to go too far, unless every hard bargain for money is usurious. As the authorities now stand, however, a contract or promise to pay money with compound interest cannot, generally, be enforced. On the other hand, it is neither wholly void, nor attended with any penalty, as it would be if usurious; but is valid for the principal and simple interest only.

Nevertheless, compound interest is sometimes recognized as due by courts of law, as well as of equity; and sometimes, too, by its own name. Thus, if a trustee be proved to have had the money of the party for whom he is trustee (who is called in law his *cestui que trust*) for a long time without accounting for it, he may be charged with the whole amount, reckoned at compound interest, so as to cover his unlawful profits. If compound interest has accrued under a bargain for it, and been actually paid, it cannot be recovered back, as money usuriously paid may be. And if accounts are agreed to be settled by annual rests, which is in fact compound interest, or are actually settled so in good faith, the law sanctions this. Sometimes, in cases of disputed accounts, the courts direct this method of settlement.

Where money due on interest has been paid by sundry instalments, the mode of adjusting the amount which has the best authority, and the prevailing usage in its favor, seems to be this: Compute the interest due on the principal sum at the time when a payment, either alone or in conjunction with preceding payments, shall equal or exceed the interest due on the principal. Deduct this sum, and upon the balance cast interest as before, until a payment or payments equal the interest due; then deduct again, and so on.

## ABSTRACTS OF THE USURY LAWS OF THE STATES.

These laws are stated from the latest information; but are constantly undergoing change, and are likely to be so, until restrictions upon interest are abolished, as they now are in some States.

ALABAMA. — Legal interest, eight per cent. Usurious interest cannot be recovered, and, if paid, is to be deducted from the principal.

ARKANSAS. — Legal interest, six per cent. Parties may agree, by contract, written or verbal, for whatever amount they will.

CALIFORNIA. — Legal interest, seven per cent. Ten per cent on money overdue on any written instrument.

CONNECTICUT. — Legal interest, seven per cent. Any person or corporation taking more than seven per cent forfeits the value so taken to any person who sues therefor within one year thereafter, and prosecutes his suit to effect. Contracts to pay taxes on the sum loaned, or insurance upon estate mortgaged to secure the same, not usurious.

DISTRICT OF COLUMBIA. — Legal interest, six per cent. Ten per cent may be paid on agreement. Any excess forfeits the whole interest.

DELAWARE. — Legal interest, six per cent. Penalty for taking more, — forfeiture of the money lent; half to the prosecutor, half to the State.

FLORIDA. — Legal interest, six per cent. But the usury laws are expressly abolished.

GEORGIA. — Legal interest, seven per cent. More than legal interest cannot be recovered. All titles to property made as part of a usurious contract are void.

ILLINOIS. — Legal interest, six per cent. Parties may agree upon ten per cent orally or in writing. If more is agreed on or is taken, only the principal can be recovered.

INDIANA. — Legal interest, six per cent. Ten per cent may be agreed upon in writing. It may be taken in advance. Excess cannot be recovered, and, if paid, shall be considered as paid on account of the principal.

IOWA. — Legal interest, six per cent. Parties may agree in writing for ten per cent. If contract be for more, the creditor recovers only the principal, and interest at ten per cent is forfeited to the State.

KANSAS. — Legal interest, seven per cent. Parties may stipulate for any rate not exceeding twelve per cent. Contract for more forfeits all interest. Usurious payments held to be made on account of principal.

KENTUCKY. — Legal interest, six per cent. Extra interest forfeited; if paid, may be recovered back.

LOUISIANA. — Legal interest, five per cent. Conventional interest shall in no case exceed eight per cent, under penalty of forfeiture of entire interest. Owner of negotiable paper discounted for more than eight per cent may recover eight per cent. Usurious interest may be recovered back, but must be sued for within twelve months.

MAINE. — Legal interest, six per cent., in the absence of any agreement in writing. No bank can take a greater interest, unless by agreement in writing; but in discounting negotiable securities payable at another place, the bank may charge in addition the existing rate of exchange between the places of payment and of discount.

MARYLAND. — Legal interest, six per cent. Excess forfeited.

MASSACHUSETTS. — Legal interest, six per cent. Any rate of interest or discount may be made by agreement; but if greater than six per cent, it must be in writing.

MICHIGAN. — Legal interest, seven per cent. Parties may agree in writing upon any rate not exceeding ten per cent. If more interest is agreed for, only legal interest recoverable.

MINNESOTA. — Legal interest, seven per cent. Parties may agree in

writing for more, but agreement not valid for any excess over twelve per cent. Interest on judgments, six per cent.

MISSISSIPPI. — Legal interest, six per cent. Parties may agree in writing for ten per cent. If more be taken or agreed for, the excess is forfeited.

MISSOURI. — Legal interest, six per cent; but parties may agree in writing for any rate not to exceed ten per cent. If more be taken or agreed for, the creditor recovers only the principal, and interest at ten per cent is forfeited to the State. Parties may contract in writing for the payment of interest upon interest; but the interest shall not be compounded oftener than once a year.

NEBRASKA. — Legal interest, ten per cent. Parties may agree on any rate not exceeding fifteen per cent. On proof of illegal interest, plaintiff shall recover only principal.

NEVADA. — Legal interest, ten per cent. But parties may agree in writing for any rate.

NEW HAMPSHIRE. — Legal interest, six per cent. A person receiving more forfeits threefold the excess; but contracts are not invalidated by securing or taking more. Exceptions as to contracts of farmers and merchants, as in Maine.

NEW JERSEY. — Legal interest, seven per cent.; on usurious contract, principal only can be recovered.

NEW YORK. — Legal interest, seven per cent. A contract for more than legal interest is wholly void. If more than legal interest is paid, it may be recovered back within a year by payer, or within the next three years by the overseers of the poor. No corporation can interpose the defence of usury; nor can a joint-stock company, having the powers of a corporation.

NORTH CAROLINA. — Legal interest, six per cent. Eight per cent. may be recovered for loan of money by written agreement. On usurious contracts no interest is recoverable.

OHIO. — Legal interest, six per cent. Any rate not exceeding ten per cent may be agreed upon in writing; excess cannot be recovered. Banks can charge or take by discount only six per cent. Railroad companies may borrow money at seven per cent.

OREGON. — Legal interest, ten per cent. Parties may agree for one per cent a month. Usurious interest works a forfeiture of the principal and interest.

PENNSYLVANIA. — Legal interest, six per cent. Excess cannot be recovered. If paid, may be recovered back if sued for within six months.

RHODE ISLAND. — Legal interest, six per cent. Any higher rate may be agreed upon.

SOUTH CAROLINA. — Legal interest, seven per cent. More than legal interest may be agreed upon by the parties.

TENNESSEE. — Legal interest, six per cent. Parties may agree in writing for ten per cent. If more be charged, the whole interest is forfeited, and if paid, may be recovered back; and the creditor is liable to a fine equal in amount to the excessive interest.

TEXAS. — Legal interest, eight per cent. Parties may agree in writing

for twelve per cent. If more than this is agreed for, no interest can be recovered.

VERMONT. — More than six per cent prohibited; and a person paying more may recover excess; but this is not to extend to usage of farmers or merchants, as in Maine and New Hampshire.

VIRGINIA. — Legal interest, six per cent. All contracts for a greater rate void. Excess, if paid, may be recovered back. The receiver is liable to a fine of double the amount of the principal.

WEST VIRGINIA. — Same as Virginia; but a new code is under consideration, which may make a change in the law of usury.

WISCONSIN. — Legal interest, seven per cent; but parties may agree upon a rate not exceeding ten per cent. Usurious contracts are void, and if excessive interest be paid, treble the amount thereof may be recovered back.

---

## CHAPTER XXVIII.

### THE LAW OF PLACE.

#### SECTION I.

##### WHAT IS MEANT BY THE LAW OF PLACE.

If either of the parties to a contract is not at home, or if both are not at the same home, when they enter into the contract, or if it is to be executed abroad, or if it comes into litigation before a foreign tribunal, then the rights and the obligations of the parties may be affected either by the law of the place of the contract, or by the law of the domicile or home of a party, or by the law of the place where the thing is situated to which the contract refers, or by the law of the tribunal before which the case is litigated. All of these are commonly included in the Latin phrase *lex loci*, or, as the phrase is translated, the law of place.

It is obvious that this law must be of great importance wherever citizens of distinct nations have much commercial intercourse with each other. In this country it has an especial and very great importance, from the circumstance that, while the citizens of the whole country have at least as much business connection with each other as those of any other nation, our country is composed of thirty-seven separate and independent sovereignties, which are, for most commercial purposes, regarded by the law as foreign to each other.

## SECTION II.

## THE GENERAL PRINCIPLES OF THE LAW OF PLACE.

The general principles upon which the law of place depends are four: First, every sovereignty can bind, by its laws, all persons and all things within the limits of the State. Second, no law has any force or authority of its own, beyond those limits. Third, by the comity or courtesy of nations,—aided in our case, as to the several States, by the peculiar and close relation between the States, and for some purposes by a constitutional provision,—the laws of foreign States have a qualified force and influence.

The fourth rule is perhaps that of the most frequent application. It is, that a contract which is not valid where it is made is not valid anywhere else; and one which is valid where it is made is valid everywhere. Thus a contract made in Massachusetts, and there void because usurious, was sued in New Hampshire, and held to be void there, although the law of New Hampshire would not have avoided it if it had been made there. But courts do not take notice of foreign revenue laws, and will enforce foreign contracts made in violation of them. If contracts are made only orally, where by law they should be in writing, they cannot be enforced elsewhere where writing is not required; but if made orally where writing is not required, they can be enforced in other countries where such contracts should be in writing. The rule that a contract which is valid where it is made is valid everywhere, is applicable to contracts of marriage.

As contracts relate either to movables or immovables, or, to use the phraseology of our own law, to personal property or to real property, the following distinction is taken. If the contract refers to personal property (which never has a fixed place, and is therefore called, in some systems of law, movable property), the place of the contract governs by its law the construction and effect of the contract. But if the contract refers to real property, it is construed and applied by the law of the place where that real property is situated, without reference, so far as the title is concerned, to the law of the place of the contract. Hence, the title to land can only be given or received as the law of the place where the land is situated requires and determines. And it has been said that the same rule may properly apply to all other local stock or funds, although of a personal nature, or so made by the local law, such as bank stock, insurance stock, manufacturing stock, railroad shares, and other incorporeal property, owing its existence to or regulated



by peculiar local laws; and therefore no effectual transfer can be made of such property, except in the manner prescribed by the local regulations.

### SECTION III.

#### THE PLACE OF THE CONTRACT.

A contract is made when both parties agree to it, and not before. It is therefore made *where* both parties agree to it, if this is one place. But if the contract be made by letter, or by separate signatures to an instrument, the contract is then made where that signature is put to it, or that letter is written, which in fact completes the contract. But this rule is subject to a very important qualification when the contract is made in one place and is to be performed in another place; for then, in general, the law of this last place must determine the force and effect of the contract, for the obvious and strong reason that parties who agreed that a certain thing should be done in a certain place intended that a thing should be done there which was lawful there, and therefore bargained with reference to the laws of the place, not in which they stood, but in which they were to act. This principle has been applied to an antenuptial contract; and it was held that, when parties marry in reference to the laws of another country as their intended domicile, the law of the intended domicile governs the construction of their marriage contract, as to the rights of property.

But for many commercial transactions, both of these rules seem to be in force; or rather to be blended in such a way as to give the parties an option as to what shall be the place of the contract, and what the rule of law which shall apply to it. Thus, a note written in New York, and expressly payable in New York, is, to all intents and purposes, a New York note; and if more than seven per cent interest is promised, it would be usurious, whatever be the domicile of the parties. If made in New York, and no place of payment is expressed, it is payable and may be demanded anywhere, but would still be a New York note. But if made in New York, but expressly payable in Boston (where any amount of interest may be agreed for), and it promised to pay ten per cent interest, when payment of the note was demanded in Boston the promise of interest would be held valid. So, if the note were made in Boston, payable in New York, and promising to pay ten per cent interest, it would not be usurious.

In other words, if a note is made in one place, but is payable in another, the parties have their option to make it bear the interest which is lawful in either place.

If the contract be entered into for money, and is made in one place but is payable at another place on a day certain, and no interest be stipulated, and payment be delayed, interest by way of damages shall be allowed, according to the law of the place of payment, where the money may be supposed to have been required by the creditor for use, and where he might be supposed to have borrowed money to supply the deficiency thus occurring, and to have paid the rate of interest of that country. If a note made in New York and payable in Massachusetts were demanded in Massachusetts and unpaid, and afterwards put in suit in Massachusetts, and personal service made on the promisor there, I should say that any interest which it bore should be recovered, provided it were lawful in Massachusetts. And indeed, generally, that such a note, being made in good faith, might always bear any interest lawful where it was payable. But a note made in a State where the law permitted only a low interest, and intended in fact to be paid in that State, but written payable in some State permitting higher interest, merely to get this higher interest, could not by this trick escape the usury laws of the State where it was made, and get the higher interest.

#### SECTION IV.

##### DOMICILE.

It is sometimes very important to determine where a person has his domicile, or HOME. In general, it is his residence, or that country in which he permanently resides. He may change it by a change of place *both* in fact and in intent, but not by either alone. Thus, a citizen of New York, going to London and remaining there a long time, but without the intention of relinquishing his home in New York, does not lose that home. And, if he stays in New York, his *intention* to live and remain abroad does not affect his domicile until he goes in fact.

He may have his legal domicile in one place, and yet spend a very large part of his time in another. But he cannot have more than one domicile. His words or declarations are not the only evidence of his intent; and they are much stronger evidence when against his interest than when they are in his favor. Thus, one goes from Boston to England. If he goes intending not merely to travel, but to change his residence permanently, and not to return to this country unless as a visitor, he changes his domicile from the day that he leaves this country. Let us suppose, however, that he is still regarded by the assessors as residing in Boston, although travelling abroad, and is taxed accordingly. If he can prove that he has

abandoned his original home, he escapes from the tax which he must otherwise pay. Now, his declarations that he has no longer a home here, and that his residence is permanently fixed in England, and the like, would be very far from conclusive in his favor, and could indeed be hardly received as evidence at all, unless they were confirmed by facts and circumstances. But if it could be shown that he had constantly asserted that he was still an American, that he had no other permanent residence, and no home but that which he had temporarily left as a traveller, these declarations would be almost conclusive against him. In general, such a question would be determined by all the words and acts, the disposition of property at home, the length and the character of the residence abroad, and all the acts and circumstances which would indicate the actual intention and understanding of the party.

Two cases have occurred in the city of Boston which illustrate this question. In one, a citizen of Boston, who had been at school in the city of Edinburgh when a boy and formed a predilection for that place as a residence, and had expressed a determination to reside there if he ever should have the means of so doing, removed with his family to that city in 1836, declaring, at the time of his departure, that he intended to reside abroad, and that, if he should return to the United States, he should not live in Boston. He resided in Edinburgh and vicinity, as a housekeeper, taking a lease of an estate for a term of years, and endeavored to engage an American to enter his family for two years, as instructor of his children. Before he left Boston, he made a contract for the sale of his mansion-house and furniture there, but shortly afterward procured said contract to be annulled (assigning as his reason therefor that, in case of his death in Europe, his wife might wish to return to Boston), and let his house and furniture to a tenant. Held, that he had changed his domicile, and was not liable to taxation as an inhabitant of Boston in 1837. In the other case, a native inhabitant of Boston, intending to reside for a time in France, with his family, departed for that country in June, 1836, and was followed by his family about three months afterwards. His dwelling-house and furniture were leased for a year, and he hired a house for a year in Paris. At the time of his departure he intended to return and resume his residence in Boston, but had not fixed on any time for his return. He returned in about sixteen months, and his family in about nine months afterwards. Held, that he continued to be an inhabitant of Boston, and that he was rightly taxed there, during his absence, for his person and personal property. This last case was distinguished from the former by the different intent of the parties upon their departure from home.

It is a general rule that, if one has a domicile, he retains it until he acquires another. Thus, if a seaman, without family or property, sails from the place of his nativity, which may be considered his domicile of origin, although he may return only at long intervals, or even be absent for many years, yet, if he does not, by some actual residence or other means, acquire a domicile elsewhere, he retains his domicile of origin.

It seems to be agreed that one may dwell for a considerable time, and even regularly during a large part of the year, in one place, or even in one State, and yet have his domicile in another.

A woman marrying takes her husband's domicile, and changes it with him. A minor child has the domicile of his father, or of his mother if she survive his father; and the surviving parent, with whom a child lives, by changing his or her own domicile in good faith, changes that of the child. And even a guardian has the same power.

---

## CHAPTER XXIX.

### TRADE - MARKS.

The statute of July 8, 1870, provides for trade-marks. The following are the important sections which relate to this subject: —

**Sect. 77.** And be it further enacted, That any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or of any State or Territory thereof, and any person, firm, or corporation resident of or located in any foreign country which by treaty or convention affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements: to wit, —

**First,** By causing to be recorded in the patent office the names of the parties, and their residences and place of business, who desire the protection of the trade-mark.

**Second,** The class of merchandise, and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated.

**Third, A description of the trade-mark itself, with fac-similes thereof, and the mode in which it has been or is intended to be applied and used.**

**Fourth, The length of time, if any, during which the trade-mark has been used.**

**Fifth, The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.**

**Sixth, The compliance with such regulations as may be prescribed by the Commissioner of Patents.**

**Seventh, The filing of a declaration, under the oath of the person, or of some member of the firm, or officer of the corporation, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm, or corporation has the right to such use, either in the identical form, or having such near resemblance thereto, as might be calculated to deceive; and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected.**

**Sect. 78. And be it further enacted, That such trade-mark shall remain in force for thirty years from the date of such registration, except in cases where such trade-mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period; in which case it shall cease to have any force in this country by virtue of this act at the same time that it becomes of no effect elsewhere; and during the period that it remains in force it shall entitle the person, firm, or corporation registering the same to the exclusive use thereof so far as regards the description of goods to which it is appropriated in the statement filed under oath as aforesaid; and no other person shall lawfully use the same trade-mark, or substantially the same, or so nearly resembling it as to be calculated to deceive, upon substantially the same description of goods: *Provided*, That, six months prior to the expiration of said term of thirty years, application may be made for a renewal of such registration, under regulations to be prescribed by the Commissioner of Patents, and the fee for such renewal shall be the same as for the original registration; certificate of such renewal shall be issued in the same manner as for the original registration, and such trade-mark shall remain in force for a further term of thirty years: *And provided further*, That nothing in this section shall be construed by any court as abridging, or in any manner affecting unfavorably, the claim of any person, firm, corporation, or company, to any trade-mark after the expiration of the term for which such trade-mark was registered.**

**Sect. 79.** And be it further enacted, That any person or corporation who shall reproduce, counterfeit, copy, or imitate any such recorded trade-mark, and affix the same to goods of substantially the same descriptive properties and qualities as those referred to in the registration, shall be liable to an action in the case for damages for such wrongful use of said trade-mark, at the suit of the owner thereof, in any court of competent jurisdiction in the United States; and the party aggrieved shall also have his remedy according to the course of equity to enjoin the wrongful use of his trade-mark, and to recover compensation therefor in any court having jurisdiction over the person guilty of such wrongful use. The Commissioner of Patents shall not receive and record any proposed trade-mark which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the same name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise, and belonging to a different owner, and already registered, or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public: *Provided*, That this section shall not prevent the registry of any lawful trade-mark rightfully used at the time of the passage of this act.

**Sect. 80.** And be it further enacted, That the time of the receipt of any trade-mark at the patent office for registration shall be noted and recorded; and copies of the trade-mark, and of the date of the receipt thereof, and of the statement filed therewith, under the seal of the patent office, certified by the commissioner, shall be evidence in any suit in which such trade-mark shall be brought in controversy.

The sections 81, 82, 83, and 84, authorize the commissioner to make rules, &c., relating to the transfer of trade-marks; prohibit the obtaining of trade-marks fraudulently; save to every one any remedy he has now for the fraudulent use of his trade-mark; and provide that no trade-mark shall be issued in any unlawful or injurious business, or if it be sought for purposes of fraud or deception.

## CHAPTER XXX.

MEANS PROVIDED FOR THE RECOVERY  
AND COLLECTION OF DEBTS.

1. **Arrest and Imprisonment.** — In eight States no person can be arrested or imprisoned for debt. These are Virginia, Maryland, North Carolina, Mississippi, Florida, Wisconsin, Arkansas, and Texas. In California no female, and in Louisiana no female and no person who has not a domicile in the State, and in Ohio no female nor any officer or soldier of the Revolutionary army, can be arrested or imprisoned for debt. In all the States the *intention* of the law is to limit imprisonment to those cases in which either fraud was committed in the contraction of the debt, or the debtor intends to abscond out of the reach of process. The provisions to effect this are very various. Generally, the plaintiff must file in the clerk's office, or indorse upon the writ, an affidavit of the facts on which he grounds the right of arrest. In some of the States provision is made for the imprisonment on execution of a debtor who can be found to possess, and refuses to surrender, property or interest, real or personal, which might be made available for the payment of his debts.

2. **The Trustee Process.** — The trustee process, or garnishee process, or process of foreign attachment, — by all which names it is known, — is now nearly or quite universal. It is substantially this: A owes B a debt; A has no property in his hands or possession which B can get at; but A has deposited in the hands of C goods or property or credits of some kind, or A has a valid claim against C for services rendered, or money loaned, or goods sold, or something else; and this B gets by suing A, *not* with a common writ, but with a *trustee* writ, so called, in which he declares that C is the *trustee* of A, for property, &c.; and on this writ, if B recovers payment against A, he will have an execution against all A's property in the hands of C, and all A's valid demands against C. But C, when notified, may come into court, and, in answer to all questions put to him, declare that he (C) has no property in his hands belonging to A, and that he does not owe A any thing. And then the plaintiff may put to him such questions as he pleases, to draw out the truth.

No one is adjudged trustee, or made to pay to the creditor the debt due to the debtor, if he has given a negotiable note for it, because he might have to pay it again to an honest indorsee. Nor if

the debt is not certainly due; nor, generally, if it is due from the trustee in any official capacity, which will require him to account over for the money in his hands; nor if the debtor has recovered a judgment against the trustee, on which execution may issue.

**3. The Homestead.** — In most of the States a *homestead* is protected from creditors, and exempted from all attachment or execution, excepting in some States for taxes, or wages of labor to a certain amount. In the abstract of the Law of Husband and Wife, already given in Section 2 of Chapter VII., a brief statement of the quantities and values of the homesteads exempted from sale on execution in the several States is also given. This is stated in that connection, because the principal purpose of these homestead exemptions seems to be the protection of the wife and family.

Various provisions are made in each of these States to combine a due protection of the creditor with proper prevention of fraud. The most common means are by requiring that "the homestead" should be distinctly defined and set apart, and in many cases by the additional requirement that the description and location of it should be put on public record.

In all the States there are also exemption laws. These provide very generally that bed and bedding and other necessary furniture, needful clothing, a Bible and school-books, and a certain amount of food and fuel, shall not be taken on attachment or execution. In some States the tools of a trade, the uniform, arms, and equipments of soldiers or officers in the militia, the family burying-vault and gravestones, a team or yoke of oxen, bees with their hives and honey, a boat for fishing, &c., are exempted. The statutes often enumerate the articles exempted quite minutely, and then add that necessary articles to a certain amount of value, usually one or two hundred dollars, are also exempted.

---

## CHAPTER XXXI.

### THE LIENS OF MECHANICS AND MATERIAL-MEN FOR THEIR WAGES AND MATERIALS.

In nearly all our States there are now some provisions for securing to mechanics, and to persons supplying materials (who are called "material-men"), their wages and pay for their materials, by means of *liens*, as they are called in law. A *lien* is a *hold* upon or a



valid claim against property. This means that every mechanic employed upon a house, and, in most of the States, upon a vessel, and in some, upon any property whatever, as a railroad or canal, either in the construction or repair of it, has a *lien* upon the property on which he has labored or for which he has supplied materials, for the amount of his wages and the price of his materials. This lien or claim he has for a certain time; and during that time he may either sue for his wages, and make an attachment of the property, or, in some States, file a petition with the proper court; and in either may have the property sold to pay his wages, unless the owner redeems it. The statutes of the several States contain various provisions to the effect that the mechanic or material-man shall give reasonable notice of his lien, or take steps to enforce it within a reasonable time.

The reason of these provisions is obvious enough. The purpose of the law is to assist and protect the mechanic, or material-man, but not to enable him to commit a fraud or do an injury to his neighbors; and it would be an injury to a man to let him buy a house and pay full price for it, and then tell him that the mechanics who built it had a *lien* (which is much the same in effect as a mortgage) upon the house, without his knowing any thing about it; and it would be an injury to an owner, who had contracted with the master-workman to repair or change his house at great expense, to settle with this master-workman in due time and pay him the full amount of his bill, without any notice to the owner that he was under an obligation to pay again for the labor spent upon his house, or let the house go on execution.

Of all these laws for the recovery of debts, and the enforcement of the liens of mechanics, the provisions *now in force* are quite recent. Only of late years has imprisonment for debt been greatly mitigated or removed, and the trustee or garnishee process made what it now is, exceedingly convenient and useful. The homestead law and this lien law, though now so widely spread, are a modern invention, or, at least, of modern introduction. The effect of this recent origin is twofold. First, important practical questions still exist as to their construction, application, and effect, which only time can solve. Secondly, there is not only no general agreement as to their details, but, to all appearance, no permanent contentment with these details anywhere. The statutes on these subjects undergo very frequent changes of all degrees of importance, and we have no reasonable assurance anywhere that precisely what is law to-day will be law in the same place to-morrow.

I have thought it best, therefore, not to attempt to give all those statutory provisions of the several States in detail. Such

a thing might be much worse than useless if it led to conduct grounded on a mistaken belief that the law of one time is just what it is at another. Nothing more has been attempted, therefore, than this: first, to give a general and accurate view of all those principles of the laws relating to creditor and debtor which are now generally agreed upon, and may be regarded as probably permanent; secondly, to give such information as may be depended upon to those who are caught in an emergency where they cannot at once seek counsel, or for any reason will not, and who may here be told, *in general*, how the law stands in relation to them; thirdly, to indicate distinctly, to the mechanic what rights he may possess and what securities he may hold, and how he may lose the rights and securities he possesses, and to the owner or buyer what liabilities he may incur, unless the one and the other take the proper course which the law has provided for their safety.

In the present state of the laws for the collection of debts or the exemption of property, it would be difficult for any one but a lawyer to learn or state all the exact provisions and effects of these laws. And, even if this were possible, no mechanic would probably be willing to trust to himself to make out his writ or file his petition to enforce his claims or lien; and any competent counsel whom he would employ for this purpose would be able to tell him what the law was *at that very time, in that very State, and on that precise question.*

For these reasons little more is attempted in this chapter, because little more is thought possible than to yield all available assistance to debtors or creditors who have not the means or opportunity of employing counsel, and of indicating to those who can consult them, the rights, security, and safety they may possess, by wise advice and accurate conformity with the law.

The forms to be used under the lien laws are not prescribed by statute. Those given below are in use in some of our principal cities; and the same, in substance, would be suitable anywhere.

(183.)

**A NOTICE UNDER MECHANIC'S LIEN LAW.**

*(To be filed with the clerk of the county.)*

To

- Esquire,

Clerk of the City and County of

SIR:

PLEASE TO TAKE NOTICE, That I, \_\_\_\_\_ residing at No. \_\_\_\_\_  
 Street, in \_\_\_\_\_ have a claim against \_\_\_\_\_ amounting to the  
 sum of \_\_\_\_\_ due to me, and that the claim is made for and on \_\_\_\_\_

account of (*here state the work or materials*), and that such work was done in pursuance of (*here describe the contract*), which building is owned by situated in the ward of the city of on the side of Street, and is known as No. The following is a diagram of said premises (*or, the said premises being described as follows*).

And that I have and claim a lien upon said house or building, and the appurtenances and lot on which the same shall stand, pursuant to the provisions of an act of the legislature of the State of to secure the payment of mechanics, laborers, and persons furnishing materials towards the erection, altering, or repairing of buildings.

Dated, this day of 18

(Signature.)

COUNTY OF }  
CITY OF } ss.

(*The name of the party claiming the lien*), being duly sworn, says, that he is the claimant mentioned in the foregoing notice of lien, that he has read the said notice and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

to before me, this day of 18

(Signature.)

(184.)

#### A BILL OF PARTICULARS OF MECHANIC'S CLAIM.

(*To be served on owner.*)

A BILL OF PARTICULARS, Of the amount claimed to be due from for and on account of (*work or materials*), and that such work was done (*or materials furnished*) in pursuance of (*state the contract or order*), which building is owned by situated in the ward of the city of on the side of Street, and is known as No of said street.

M.

To

18

(185.)

#### A RELEASE AND DISCHARGE OF A MECHANIC'S LIEN.

I DO HEREBY CERTIFY, That a certain mechanic's lien, filed in the office of the clerk of the county of the day of one thousand eight hundred and at o'clock in the noon, in favor of claimant against the building and lot, situate side of

Street,                      and known as No.                      in said street, whereof  
is owner, and                      is contractor, is discharged.  
(Signature.)

ss. On the                      day of                      one thousand eight  
hundred and                      before me came                      who is known to me  
to be the individual described in and who executed the above certificate,  
and acknowledged that he executed the same.  
*(Signature.)*

(186.)

## RELEASE AND DISCHARGE OF A MECHANIC'S LIEN. ANOTHER FORM.

WHEREAS, We, the subscribers, have erected and furnished materials for erecting on lot or piece of ground situate And have agreed to release all liens which we or any or either of us have, or might have, on the said by reasons of materials furnished or work performed for erecting the same. Now these presents witness, that we, the subscribers, for and in consideration of the premises, and of the sum of one dollar, to each of us at or before the sealing and delivery hereof by the said well and truly paid, the receipt whereof we do hereby acknowledge, have remised, released, and for ever quitclaimed, and by these presents do remise, release, and for ever quitclaim, unto the said and to his heirs and assigns, all and all manner of liens, claims, and demands whatsoever, which we, or any or either of us now have, or might or could have, on or against the said and premises, for work done or for materials furnished, for erecting and constructing the said building, or otherwise howsoever. So that he the said and his heirs and assigns, shall and may have, hold, and enjoy the said and premises, freed and discharged from all liens, claims, and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the same, if these presents had not been made.

IN WITNESS WHEREOF, We have hereunto set our hands and seals, the day of the date written opposite our respective signatures.

(Date.)                      (Witnesses at signing.)                      (Signatures of claimants.)



**1. A TREATISE ON THE RULES OF ORGANIZATION AND  
PROCEDURE IN DELIBERATIVE ASSEMBLIES;**

**AND**

**2. A GLOSSARY OF LAW TERMS IN COMMON USE.**



# **RULES FOR ORGANIZATION AND PROCEDURE IN DELIBERATIVE ASSEMBLIES.**

---

## **CHAPTER I.**

### **ORIGIN AND PURPOSE OF THE RULES OF ORDER.**

**THE** rules of order for deliberative bodies are the results of centuries of experience in England and in this country. They grew up in the English Parliament, and are often called rules of parliamentary order. Their purpose is to secure to all the members alike, of any body whatever that has met to debate or discuss questions, entire freedom of speech, protection from interruption and from ill treatment of any kind. They determine in what order motions in relation to various subjects shall be considered, and generally how the assembly may proceed to accomplish its purposes. The reasons for these rules may not always be obvious, but they are such as the experience of England for many ages, and of this country for more than a century, has proved to be on the whole beneficial. Hence, when any assembly of men come together to discuss matters of common interest, these rules are considered as applying of course.

When the body is permanent, having many sessions, it is common to vote that the established rules of order shall have force in that body until changed. As these rules have no binding force on any body, it is always competent for any assembly, whether temporary or permanent, to change these rules, and adopt new ones at their pleasure.

It not unfrequently happens that some member of an assembly or meeting moves to dispense with the rules, or with some special rule. In permanent bodies there are usually rules for determining how large a majority of members is requisite to suspend the rules; as, for example, two-thirds or three-fourths. Where there is no such rule, a simple majority may suspend the rules, or any rule. Sometimes a member will ask that a measure be adopted by general consent. The presiding officer then puts the motion, and, if no one objects, it is carried, but if any one objects, it is withdrawn.



In what follows, I sometimes use the word "assembly," or "house," or "casual meeting." By the word "assembly" I refer generally to permanent bodies, as legislatures, city councils, school committees, and the like. By "casual meeting" I mean an assemblage of persons who come together for some common purpose, or moved by some common interest, to deliberate upon and take such measures as seem to them desirable, but who have no official and permanent existence as a political body. But the rules of order may be considered as applying for the most part to all these bodies or meetings alike, so far as the character and purpose of the meeting permits.

## CHAPTER II.

### ORGANIZATION.

If the body be a permanent one, it has officers who, at the first session, are chosen, or who hold office by some law or rule; and they take their places in discharge of their duties at every session. Thus, at a town meeting, the senior selectman presides at meetings appointed by law for the election of various public officers. At other town meetings, a presiding officer must first be chosen. The presiding officer of the body to be organized may be a speaker, moderator, chairman, or president.

If an assembly of men come together who are as yet without organization, some one says aloud, "Gentlemen will please come to order;" and as soon as order and silence are obtained, he says, "Please nominate a moderator (or chairman)." When nominations are made, it is his duty to take the first that comes to his ear, and say, "Mr. A B is nominated as moderator; is it your pleasure that he be chosen to that office? Those who are in favor thereof will say 'aye.'" When they have voted, he says, "They who are opposed thereto will say 'nay' (or 'yes' and 'no');" and he will then announce the vote as in the affirmative or negative. If in the negative, he will call for another nomination; if in the affirmative, he will conduct the person chosen to the chair, or will call upon him to take the chair. This person becomes then the presiding officer of the meeting. Upon taking the chair, he will proceed to complete the organization by asking for the election of a clerk, who is then chosen in the same manner as the presiding officer was. The vote may be taken by holding up of hands, or by ballot.

It not unfrequently happens, in large and important meetings, that the first organization is only temporary, and that the first thing done by it is to choose a committee to report names for a permanent organization. The presiding officer usually says, "How shall this committee be chosen?" If some one replies by a motion that the committee be nominated by the chair, he puts that motion, and, if it be adopted, proceeds to nominate the committee. If the motion is to appoint them by nomination from the meeting, and that is carried, the chairman asks for nominations, and then puts each name as he first hears it to the vote.

If the assembly consists of delegates chosen to attend it, the next step should be for the appointment of a committee to receive and examine credentials; because only those who are duly authorized should vote on the

permanent organization or any subsequent questions. This committee is raised either by appointment by the chair, or by nomination, as before. Strictly, this committee should make their report, and the right of those present to be there ascertained, before any thing further is done. But as the examination of credentials sometimes occupies a considerable time, it is common to proceed at once to the permanent organization and the business of the meeting. It is obvious, however, that no important questions should be passed upon until it is known who has the right to vote upon them.

## CHAPTER III.

### QUORUM.

THIS word means, in practice, the number of persons, or the proportion of the whole number, who are necessary for the transaction of business. This number or proportion may be fixed by law; and if not so fixed, it may be determined by the assembly itself, or it may be regulated by some recognized usage. If there be no rule on the subject, one more than half of the number of the members composing the assembly is the number required to transact business. No business should be transacted unless a quorum be present; and if at any time a member states that he thinks a quorum is not present, and asks for a count, such count must be taken by the presiding officer, or under his direction; and if it is found that the number is less than that requisite for a quorum, the assembly is adjourned. This is called being "counted out."

## CHAPTER IV.

### HOW QUESTIONS ARE DECIDED.

THE general rule is, by a majority of those present and voting. But this rule may be qualified by a specific rule of the assembly, or of the law creating the assembly, requiring a specific number or proportion in relation to some special question; thus, sometimes a vote cannot be passed, as, for example, over the veto of the President of the United States, by less than two-thirds of each House. Some of our State constitutions provide that certain things shall be done by the legislature only by a certain proportion of all the members elected; and it is common to provide that the rules and orders shall not be changed without a consent of two-thirds, or of a still larger proportion. On the other hand, it is very common to provide that one-third or one-fourth of the members voting shall suffice to require the taking of a question by yeas and nays. This is done in part to make a vote more certain; but mainly, that all may know how each one votes.

### OF THE OFFICERS.

The presiding officer announces the business which is before the assembly; and if that stands in any special order, as in the warrant for a town

meeting, he should announce it in that order ; indeed, the warrant should be read.

He receives all motions and propositions offered by members, and puts to vote all questions which are regularly moved or properly arise, and announces the result. If any messages or communications are sent to the assembly, he receives and announces them. He nominates committees, if this be a part of his duty by a rule, or if it be ordered.

By far the most important part of his duty is to preserve the rules of order, and for this purpose to state what they are whenever a question arises. We shall presently see that there can be an appeal from his decision, and how that can be conducted ; but unless there be such appeal, his ruling must be acquiesced in and promptly obeyed. This is, indeed, a matter of the last importance. If a presiding officer does not know his duty, or neglects or refuses to perform it, it is impossible for order to prevail. And if he tries to perform his duty, and is not effectually sustained by the assembly, it is impossible that there should be order, or any good result of the meeting ; and the best thing it can do is to disperse itself at once. It is often a trying thing, especially for those not trained in the discipline of debate, to submit to rules which seem to them merely technical, and in their effects subversive of all free discussion. If such feelings prevail, and the meeting yields to them, or is unable to repress those who, from irritation, or mistake, or worse motives, insist upon disturbing the order of the assembly, nothing more can be done until in some way order is vindicated and restored ; and if that cannot be done, it is not an organized assembly, but a mob.

## CHAPTER V.

### HOW BUSINESS MAY BE INTRODUCED.

If the assembly be a permanent one, there is probably some record of the orders of the day ; and those subjects are to be considered in the order fixed for them, unless this order is changed by a special vote. Sometimes it is voted that the orders of the day shall be taken up at a certain hour, the previous time being open for motions. Sometimes a special topic has been assigned for a special hour ; and when that hour comes, the presiding officer announces that hour and that topic, or any member may call it up. If none of these things designate the business which must come before the assembly, some business is introduced by motion.

A member, rising, addresses the presiding officer by his title, and the presiding officer, hearing him, calls to him by name, and this member then has the floor. If more members than one rise at once, the presiding officer should give the floor to him whose voice he first heard. But to prevent partiality, a member objecting that the presiding officer did not give the floor to himself or some other member who rose first, may ask for a vote upon this point ; but this measure is seldom resorted to. No stranger can address the chair or the assembly ; but he may offer a petition through any member, and it is every member's duty to offer to the assembly any peti-

tion placed in his hands by his constituents, unless it is distinctly and certainly objectionable for indecency, personal scandal, or other impropriety. We have seen, in a former part of this volume, how the national constitution guards the right of petition. This petition, when offered, should be received and courteously dealt with.

## CHAPTER VI.

### OF MOTIONS.

It is convenient to divide motions into direct and principal motions on the one hand, and collateral or subsidiary motions on the other. Motions of the first class are those which introduce subjects or questions, or which directly qualify or dispose of them. Motions of the second class are such as to lay on the table, to postpone to a day certain, to commit, to amend, to postpone indefinitely, or a motion for the previous question. To these may be added a motion to adjourn. All of these motions will be separately considered.

The presiding officer may always direct that a motion be reduced to writing. Of course, if he exercises this power, he must be sure to do it impartially. It is sometimes especially necessary to do this when the debate grows confused, as by amendment upon amendment; for if it all be trusted to memory, it may be difficult to say what the question is. Sometimes the clerk or secretary reduces the motions to writing, as they are offered; and sometimes a member requires that a motion be reduced to writing, and then it is usually done; but, practically, this matter is left, in most cases, to the discretion of the presiding officer.

## CHAPTER VII.

### RESOLUTIONS AND ORDERS.

EVERY thing is decided by an assembly by a vote; and this, therefore, is a general term, covering all its acts. But these acts may be divided into resolutions and orders. A resolution expresses the sentiment, belief, or wish of the assembly. An order is a command, and it may be directed to one of their own officers, or to the whole body, as when an order is made as to the time of taking a question and the like; or to any person or body whom the assembly have a right to command. Sometimes, though not very accurately, it is expressed thus: Ordered, that so and so be requested to do a certain thing, as if the Secretary of the Commonwealth is requested to return a bill; which may always be done before it is approved.

### SECONDING.

In practice, motions are often announced by the presiding officer without waiting for a seconding. One reason for this is, that if the presiding officer be a member of the assembly, he may second the motion himself; and

his announcing it is equivalent to his seconding it; but, strictly, a motion should not be considered until it be seconded, for it is not worth while to discuss a motion which no one in the assembly cares enough about to second; and not unfrequently, to test this, the presiding officer, if he hears no seconding, asks if that motion is seconded; and if it be not seconded, he does not put it.

#### WITHDRAWING A MOTION.

It often happens that a mover wishes to withdraw his motion; but if it has been seconded, it is in possession of the assembly, and cannot be withdrawn, excepting by their leave. But if the mover asks leave to withdraw his motion, it is usually granted to him.

### CHAPTER VIII.

#### THE ORDER OF MOTIONS.

LEGISLATIVE assemblies usually provide by a rule as to the order in which motions may be made. In ordinary or casual meetings, to attend to some business, or to discuss some question, no special rules of this kind are adopted. It is convenient, however, to consider the rule on this subject in force in Congress and in some of the State legislatures, as in force in any meeting. The order in this respect is frequently, that, while a question is before the meeting, only the following motions shall be received, and they in the following order; namely, to adjourn, to lie on the table, for the previous question, to postpone to a day certain, to commit, to amend, to postpone indefinitely. These several motions will be considered presently. At present it need only be said that the above order rests on sufficient reason; for instance, a member moves to postpone a subject indefinitely; and, as it stands, the assembly would be disposed to postpone it indefinitely, and so get rid of it. But if a member thinks he can amend the matter before the meeting, so as to make it acceptable to the meeting, he should have an opportunity of doing so; and therefore if a member moves to postpone indefinitely, and another member moves to amend, this last motion takes precedence of the former, and must be put first; then if the meeting does not like the proposed amendment, and rejects it, the motion to postpone indefinitely will be put. Similar reasons exist for the order of precedence of all these motions.

We will now consider these motions in the order above stated.

### CHAPTER IX.

#### MOTION TO ADJOURN.

THIS motion is said to be always in order. It is, however, subject to the universal rule that a motion once disposed of cannot be immediately repeated. Hence, if a motion to adjourn be negatived, some other motion

or measure must be passed upon in some way, and then a motion to adjourn may be again made.

Nor is it meant that any member can rise up when another is speaking and move to adjourn; for a member who has the floor has the right to finish his remarks, unless called to order, which call will presently be spoken of. But whenever he has closed his remarks, whoever gets the floor may always move to adjourn. This motion must be put, no other motion taking precedence of it. It is common, when a member moves to adjourn, for another member to ask him to withdraw his motion for a short time, while some other incidental matter be brought forward and disposed of; then the motion to adjourn comes up. The adjournment may be without day, which is a dissolution of the meeting, or to a time which the motion specifies. Sometimes there is a previous vote, that when the meeting adjourns it adjourns to such a time; and sometimes there is a general rule about the adjournment, as in the daily sessions of the legislature, and an adjournment is to the time that may be fixed in either of these ways.

## CHAPTER X.

### TO LIE ON THE TABLE.

THIS motion may be made for a variety of reasons. One is, that the subject may give way to another which a member deems of more immediate importance. Another is, because a member wishes for some delay, that he or the assembly may examine further into the matter. Any thing which is laid on the table remains there, unless a motion be made to take it up.

It is a general rule that a motion that any subject lie on the table is not debatable; and the motion is sometimes made to enable the meeting to get rid of it without further debate. It is an insufficient way, however, because, if the motion be laid on the table, a motion may be made at once to take the subject from the table, or to reconsider the motion to lie on the table, and one of these motions is generally debatable.

## CHAPTER XI.

### THE PREVIOUS QUESTION.

THIS is a motion of much importance. The history of it in parliamentary law is somewhat obscure; now, however, and in this country, it is a generally established rule that the motion for the previous question is not debatable, and, therefore, it forms the best, if not the only adequate, means by which an assembly can terminate a debate at once, when it has made up its mind that any further debate would be useless or mischievous. The necessity that every assembly or meeting should have this power in their own hands ought to be obvious. For example, let there be a meeting of one hundred men, ninety-four of whom are in favor of a certain course, which one of them embodies in a motion, and six are opposed to this course and to the motion, — it is plain that the six, by relieving each other, may

talk on indefinitely, and weary out the meeting, or consume all the time at its disposal, and so prevent any thing from being done, unless the meeting can terminate the debate and proceed to a vote. This it can do by means of the previous question, if a motion therefor is not debatable. But if this motion is debatable, the debate may still go on indefinitely.

The way this end is accomplished is this: the previous question is, "Shall the main question be now put?" A member moves the previous question, and it is seconded; then the presiding officer must put to the meeting at once the question, "Shall the main question be now put?" No debate can follow, but the meeting determines this question by vote; and if that vote is in the affirmative, the main question is then put. The main question is the question which was before the house, and was then debated. Sometimes the ordering of the main question is considered as cutting off amendments. We think it a more frequent and a better way to consider the main question as the question in the form in which it was under discussion when the previous question was ordered. The presiding officer will then first put the last amendment offered, and then the previous amendments, in their order, and then the original question as it stands, either amended or not amended.

## CHAPTER XII.

### POSTPONEMENT TO A DAY CERTAIN.

THIS motion is frequently made for such reasons as seem good to the mover, and is carried if they seem good to the meeting. Generally, it is accompanied by the words "and shall then be taken up for debate," or some equivalent words, providing that at that time this subject shall take precedence of all others. If such a motion be passed, when that time arrives the presiding officer will announce that the time has come for considering such a subject, and will state the question as then before the assembly.

## CHAPTER XIII.

### TO COMMIT.

A MOTION to commit is made when the mover desires to have the subject fully considered and investigated, and a report made upon it after such investigation. It is, however, often made, in fact, for other reasons: one of them is, to dispose of it for the time, and get it out of the way; or it may be to get rid of it altogether, by giving it to a committee who will never make a report of it. And sometimes it is alleged that the motion is made to get a vote upon the subject without debate; for that must happen if the time is limited, and the committee delay their report until there is no time for debate. But these are not good reasons: the only good reason being that just above stated.

A committee make their report through their chairman, or some one whom the chairman or the committee directs to make it. It is frequently

received by the presiding officer, as a matter of course, and without motion, and handed to the clerk or secretary. More commonly, however, a motion is made and voted upon to receive the report. A mere reception of a report discharges the committee, so that, unless authorized by a new vote, they have nothing more to do with it. But the reception of the report is no expression whatever of the sentiments of the meeting in relation to it, although a refusal to receive would be a strong expression of disapprobation. Sometimes the motion is that "the report be received and approved."

Not unfrequently a subject is referred to a committee, with instructions to do something about it; as to report a resolution, or a bill or order, or to report at a certain time: which instructions the committee must, of course, obey.

If the report has appended to it resolutions, or a bill or vote of any kind, various motions may be made in reference to these: as, if they are only resolutions, that they are adopted as the sense of the meeting; or, if they recommend any special measure, or offer a bill or specific vote, the motion may be that the resolutions, bill, or vote be placed in the orders of the day, or be assigned for consideration at a particular time; or such other disposition may be made of them as the mover wishes.

The formation and duties of committees will be spoken of presently.

## CHAPTER XIV.

### MOTION TO AMEND.

THIS is a very wide subject, because motions may be made for amendments of almost any kind. It is in this matter that confusion is most apt to come into the business of an assembly. Certain rules, intended to prevent confusion, have been generally adopted, and may be considered as established by usage, although in practice they are sometimes disregarded.

The first of these is, that every motion to amend is itself subject to amendment; but as this, if carried too far, would lead to inextricable disorder, there is a subsidiary rule, to the effect that, if an amendment be moved, an amendment may be moved to this amendment; but there can be no amendment offered to the second amendment. Thus, if one member offers a motion, a second member may move to amend it in a certain way; a third member may move to amend the amendment offered by the second member; but there it must stop. If a fourth member moves to amend the amendment offered by the third member, his motion would not be in order, and therefore would not be received. After the amendments offered are passed upon, then, and only then, the fourth member may bring forth his amendment as a new motion. A second rule is, if the assembly either adopt or reject a proposed amendment, that amendment cannot be afterwards altered or amended in any part of it. Generally the same rule applies to amendments which was stated in reference to adjournments; namely, that if the amendment be once rejected, it cannot be immediately repeated. For, if it could be, there would be no end to a discussion of this kind. Two or three obstinate persons might, by getting the floor succes-



sively, hold the attention of the meeting to a measure which they had once rejected. But if, after an amendment is rejected, further action is had upon the principal motion, so as to give to that amendment a new aspect, or a new effect, it may then be properly offered and considered anew.

It may be said, also, that if a proposition consists of many parts, which succeed each other in an orderly way, amendments which relate to the earliest should be first considered. It has been said that if an amendment be made to a later part, an amendment to a former part is not receivable. This we do not think reasonable; for it may be that the amendment of the latter part has made the amendment of the former part necessary.

Amendments may be made by altering, by striking out, by insertion, or both striking out and insertion, or by additions.

If the amendment propose to strike out certain parts, and is rejected, that amendment cannot be repeated, unless other amendments have given to it a new effect; but an amendment may be offered to strike out those parts or words together with other parts or words, for this would be a new amendment. So, if certain words be struck out, an amendment cannot be offered to restore them, unless in connection with other words which give them a new effect. So, if an amendment to insert is rejected, it cannot be repeated, unless it be with other words which suffice to make of it a different proposition.

If the amendment be by striking out and inserting, any member may ask that it be divided, and the question taken first on striking out, and then on inserting. This is usually done on request; but if it is objected to, the presiding officer will put the question to vote. The reason for dividing such a question is obvious. Members may be agreed on the expediency of striking out certain words, but there may be much difference of opinion as to supplying their places with any words, or with what words; and if the motion to strike out alone prevails, then the motion to insert will be put; and any other motion may then be made in regard to the words to be inserted. Any motion which consists of different parts may be divided, and the different parts voted upon separately.

Whenever a motion to amend is made, whether by striking out or inserting, or both, or by some addition, the presiding officer should read the passage as it stands when offered, and then should read the motion to amend, and then should read the passage as it would read if the amendment be adopted, in order that the meeting may know clearly what the effect of their votes may be.

The amendment sometimes consists in filling blanks. The proper method of doing this has been much disputed, and may not now be quite settled. The blank may require an amount inserted, or it may require a time inserted. Different members may move different amounts or different times; and the question then occurs, in what order these questions shall be considered. One way would be to take the motions in the order in which they are made. So far as we know, this method is very seldom adopted. The question lies between the largest and the smallest amounts, or the longest and the shortest times. To show the diversity on this point, it may be stated that, in the English Parliament, the rule is,

that the *smallest* sum first be voted upon; and if that be rejected, then the larger : and the *longest* time first ; and if that be rejected, then the shorter. While in the United States Senate the question is first on the largest sum, and then on the smaller, and first on the longest time, and then on the shorter. Permanent assemblies will probably make their own rule on the subject; and any casual meeting or assembly may direct whichever method preferred. On the whole, we think that the commonest, as well as most convenient and reasonable rule, is that of the Senate of the United States, just stated. Then, if the question be first taken on the largest amount, those who are in favor of some amount, but not of so large a one, can vote against it; and if it be negatived, the amount can be brought down by successive motions, until an amount be reached which a majority are willing to agree to. A similar remark may be made in regard to beginning with the longest time.

## CHAPTER XV.

### HOW COMMITTEES ARE APPOINTED.

IN permanent assemblies there are always rules as to the manner of appointing committees. In casual meetings, any method may be adopted that the meeting chooses. Sometimes they are chosen by ballot; sometimes by a nomination from members, followed by a vote; sometimes by a nomination by the presiding officer, followed by a vote; and sometimes by appointment by the president, without vote. If there be no general rule, and no special vote in reference to a committee, the customary way in casual meetings is for the presiding officer to nominate the members for the committee; and, generally, he offers such nomination to the meeting for a vote of approval; but this he need not do, unless a vote requires it. Sometimes the presiding officer declines to nominate, and asks the meeting to appoint in some other way. Sometimes the presiding officer is authorized to appoint the members at a future time, after the meeting is dissolved, and notify the members of the committee through the clerk or by publication. Sometimes the presiding officer, or other person or persons, are added to the committee by motion. It is not regular to put any persons on the committee who are not members of the assembly or meeting. This is sometimes done by casual meetings, and is to be understood as a request to such persons to serve the meeting in that way.

In appointing the committees, however this duty may be performed, it is customary to appoint the mover first on the committee, and after him, to appoint those who have manifested most interest in the question, equalizing those in the affirmative and in the negative, as far as may be, but having the balance rather in the affirmative than in the negative.

At the meetings of the committee, the common rules of order, so far as they are applicable, are usually applied. A majority of the committee constitutes a quorum, unless there be some vote or rule to the contrary. The number of the committee should be fixed by vote, if not by rule; and if various numbers are proposed, the most convenient and customary

method would be, as before, by beginning the vote with the largest number. When the committee are appointed, the clerk should notify the chairman, and inform him who the members are, and give him the papers referred to the committee.

#### HOW THE COMMITTEE MEET AND ACT.

The committee is called together by the person first named upon it, after such consultation with the other members about time and place as he sees fit.

The committee, when they meet, may choose a chairman, but an almost invariable usage appoints the person first named as chairman; usually, also, if the chairman be absent or disqualified, the person second named takes the place of chairman, and so on afterwards.

A committee is sometimes authorized to send for persons and papers, if the assembly appointing the committee has a right to require these; as, for example, a legislative body has. And the committee summons persons and demands papers; and if the persons do not come, or come but refuse to answer, or if the papers are not brought, the committee must report the fact to the assembly appointing them, who will then take such measures as they think proper.

In casual meetings, as, for example, of the stock-holders of a corporation, the committee is sometimes authorized and requested to obtain some desired information; and in this case, if they cannot obtain the information, they can only report the fact, leaving the body which appointed them to do what they think proper. An ordinary committee can adjourn from time to time, until their business is completed.

#### MINORITY REPORTS.

We have already spoken of the reports of a committee. Such a report is the report of a majority of the committee. There may also be minority reports; but these are not reports of the committee, and are not entitled to reception or consideration, but by vote. Practically, however, they are usually received as a matter of course, if not in themselves open to decided objection. They are not usually printed with the report of the committee, unless by special vote.

### CHAPTER XVI.

#### COMMITTEE OF THE WHOLE.

SOMETIMES an assembly of a permanent character goes into committee of the whole. This may be done by a casual meeting, but little or nothing could be gained by it. The general purposes of going into committee of the whole are two; one of these is to give the presiding officer an opportunity for debate, such as any other member has. This purpose is sometimes accomplished more easily by the presiding officer simply putting a member in his chair and taking his place among the members, and there

joining in the debate; but regularly a presiding officer cannot take part in the debate. One reason for this rule is, that it helps him to preserve that impartiality which is strictly indispensable.

The more general purpose of going into committee of the whole is to give the opportunity for a freer discussion, because technical rules of order do not apply there with so much force. Moreover, motions may be made and questions put to the vote, and so the sentiment of the members ascertained, while the votes passed do not have the force and effect of formal votes of the assembly. It is a common thing for the committee thus to agree upon some measure which serves to indicate the opinion of the assembly and direct its action, although it has no binding force, and may be reversed in the assembly. While the technical rules of order are not in full force in the committee of the whole, they are in force so far as the preservation of order requires. The previous question cannot be put in the committee of the whole, nor is there any way to stop a debate of which the committee are weary, but by a motion that the committee rise and report. The committee of the whole cannot adjourn. When it gets through its work for that session, it can only rise and report progress, and, if it sees fit, ask leave to sit again. When it rises, the chairman reports progress to the assembly; that is, states briefly what the committee has done or agreed upon, and asks leave for the committee to sit again, if he be so instructed.

## CHAPTER XVII.

### PRIVILEGED QUESTIONS.

THAT one of these which is most frequently made use of is the right to call to order. This is a right which every member has at all times; and it is the only way in which it is orderly to interrupt a person while he has the floor and is speaking. The reason for this single exception to an otherwise universal rule is, that but for this rule a member who indulges in disorderly remarks and improprieties of any kind or extent would be permitted to go on as long as he chose. Therefore the presiding officer or any member may, at any time, call a speaking member to order. The way of doing so is this: the member, rising, says, "I call the gentleman to order," or "I rise to order." The presiding officer replies, "Mr. A B calls Mr. C D to order; Mr. C D will take his seat, and Mr. A B will state his point of order." The point of order being stated, the presiding officer then rules upon it. If he decides that the member speaking was out of order, he will tell him so, and point out wherein the disorder existed, and the member speaking will then resume his remarks; but if he persists in his disorder, the presiding officer will require him to take his seat and discontinue his speech. This is the ordinary way; but if the presiding officer decides that the speaking member is in order, any member of the assembly may appeal from this decision, and if the presiding officer decides that the speaking member is not in order, the member himself may appeal from the decision. Of this subject of appeals from the presiding officer we shall speak presently, now stating only that, after the question of order is determined, the

speaking member may resume his remarks and finish his speech, providing he avoids what has been decided to be disorderly.

It is hardly accurate to say that a call to order is the only thing which permits the interruption of a member speaking, for another member may perceive some other cause for interruption; as that persons are present who should not be, or that persons present are violating some order of the assembly, or that there is so much noise and confusion that the assembly cannot hear the person speaking. In any such case, any member is privileged to rise and call the speaker's attention to the disorder.

Another privileged question, which does not permit the interruption of a member speaking, but which takes precedence of all ordinary questions, is what may be called a personal privilege. It is when a member rises to complain of personal ill-treatment of him as a member, or of some public attack upon him, or falsification of his speech; and he invokes the protection of the house, or, it may be, the opportunity of correcting an error or exposing a falsity. So, also, if the assembly itself has been ill-treated in regard to its rights and privileges, any member may rise and state the fact, to the end that the assembly may protect itself.

## CHAPTER XVIII.

### ORDERS OF THE DAY.

In a permanent assembly there are always rules which regulate this matter. Generally the clerk, beside his daily record, keeps in a book appropriated to that purpose a list of what are called the orders of the day. It consists of each of the subjects for future action, which he enters as they come before the assembly. Those which are assigned to a day certain are especially the order for that day. When the orders of the day are called for, they are taken up in the order in which they stand in the book, unless some special rule or motion be made changing this order. Sometimes it is ruled that, on a certain day or days, the orders shall be taken up, and all debatable matter passed over. Then if any member, as any subject is called, expresses his wish to debate it, it is passed over. All other subjects are disposed of; and in this way the orders of the day are cleared of a large portion of their topics.

Sometimes some particular subject is assigned for some particular hour on a day named, and it is then the order of the day for that hour; and when the hour arrives, if the speaker does not announce it, it is a privileged motion to call it up for consideration; and when it is disposed of, the orders of the day are resumed in the order in which they stand in the book.

## CHAPTER XIX.

### HOW THE PRESIDING OFFICER PUTS QUESTIONS.

WHEN a motion is made on a subject, the presiding officer announces it, and so brings it before the assembly, usually adding, "The question before

the assembly is so and so." Then there may follow debate; and when the debate terminates, the presiding officer, rising, says, "Is the assembly ready for the question?" If there be no answer, or members say "yes," the speaker then puts the question, being very careful to state precisely what it is. He then says, "As many as are of opinion that this motion should be adopted" (or using some other equivalent or appropriate words) "will say 'aye'" (or, will lift up their hands, as the rule or usage may be, or as he thinks proper to direct in the absence of any rule or usage). He then calls for the negative vote in the same manner; and then announces what he believes to be the result.

#### HOW THE VOTE MAY BE ASCERTAINED.

If any member questions this result, he rises and says to the presiding officer, "I doubt the vote," or "Please make the vote certain." The presiding officer then says to the meeting, "The vote is doubted: those in favor of the motion will rise and stand in their places until they are counted." When they are counted, he will in the same manner call up those opposed to the motion; and when they are counted, he will announce the result. If so large a number arise at once as to make the majority certain, the presiding officer may omit the call on those who hold the opposite view, unless that is requested.

The count is usually made by the presiding officer himself, or by the clerk under his direction, if the meeting is small enough to make this count easy and certain; otherwise, he appoints tellers. In permanent assemblies, where members have their fixed seats, tellers are usually appointed at the beginning of the session, for the different divisions of the assembly. In casual meetings, the presiding officer appoints the tellers, as the count is required; that is, he designates certain persons sitting in different parts of the meeting, each to count and report the votes within the part assigned to him, which is defined as well as it may be. After the rising vote is taken, the tellers are called upon in their order each to report his number, which the clerk repeats aloud and takes down: the result is then stated.

It may happen that a member doubts the accuracy of one or another of the tellers' reports; he may then move for a new count, and, if the assembly sees fit, a new count is ordered.

#### TAKING THE QUESTION BY YEAS AND NAYS.

In permanent assemblies this matter is regulated by rule, so that a number much less than a majority, as one-third or one-fourth, may require the votes to be so taken. The reason is, that it is a proper protection to the rights of a minority to require that each member should declare his vote, which is then recorded. A vote is taken in this way by calling the names from a list or roll, and it is therefore obvious that it cannot be so taken where there is no list or roll.

## CHAPTER XX.

## HOW A MOTION IS MADE.

A MEMBER rises and says, "Mr. Speaker" (or Mr. Moderator, or Mr. Chairman), "I offer the following motion," or, simply, "I move," &c. He then states or reads his motion. He should then stop until the presiding officer puts the motion, and he may then speak to it. It is considered that he has the right to speak first upon it; and courtesy usually allows him the right of closing the debate. Every one who speaks should speak "to the question," as the phrase is, but in practice he is not required to confine himself strictly and narrowly to the exact question. He may say whatever seems to him to have a bearing upon it, though this be remote and collateral. Here a certain discretion may be used, and if there be no intentional disregard of order on the part of the speaker, the discretion should be liberal. At any time, however, the presiding officer, or any member believing the speaker to wander quite too far, may call him to order.

A member who has the floor may, at the request of some other member, give way to him. If he does so at all, he does so, in strict right, altogether; that is, after the member to whom he gives way has finished, any other member may obtain the floor by rising; but commonly, if a member having the floor gives way to another member for a special purpose, courtesy gives the floor back to him after the member to whom he yielded has finished his remarks; especially is this so if the member expressly gives way for a few minutes.

## RULES AND USAGES OF DEBATE.

There are some rules or usages in this matter of debate which it may be well to mention. One is, that a mover should not make two motions at once; for example, he should not make a motion, and add thereto, "I move that this motion be laid on the table." Regularly, he should wait until the first motion is put, and then make his second motion; but in practice, it is common to make two such motions together, if this is not objected to.

Another rule intended to promote courtesy in debate is, that no member should be spoken of by name. He should be described as the member from such a place, or who spoke last, or last but one, or who made the motion, or in some such way. For a similar reason, no member having the floor can address any other member, or any person but the presiding officer.

It may be considered as a general rule that no person should speak more than once to the same question; but this rule, if it be one, is commonly disregarded in practice. But if a member who has spoken once, or oftener, gets the floor, and a member who has not spoken at all rises and desires the floor, it is common and it is right for the presiding officer to give it to him.

Sometimes a rule is made by the meeting that no member shall speak more than so many minutes; and a member having the floor under this rule may give up a part of his time to another member, reserving only what is left. When his time expires, it is the duty of the presiding officer to call upon him to stop; then some member may move that he have leave to go on, either indefinitely or for a certain time; and if the meeting so vote, he goes on.

Sometimes the assembly or meeting adopts a rule that the debate shall stop at a certain time, and the question shall then be taken; at which time it must be taken, unless otherwise ordered by a new vote.

Another common rule is, that the presiding officer does not vote unless there be a tie or equal vote, — then he may vote; but if he declines to vote, the motion does not pass.

Another rule, and one of much importance, is, that there should be but one question and one subject before the meeting at any one time. Every one knows how certainly, if a number of men meet and discuss a question in a conversation and without any order, the discussion will wander everywhere; new subjects coming up continually, as one or another suggests them, until there neither is nor can be any definite consideration of any one subject, and no rational conclusion concerning it. To make this disorder impossible is one of the main purposes of the rules of order; and it helps to accomplish this purpose if the meeting is willing to dispose altogether of one thing before they take up another.

## CHAPTER XXI.

### APPEALS FROM A PRESIDING OFFICER.

It is his duty to keep order, to conduct the transaction of business, and decide all questions according to the rules of order. But it is the right of any member to appeal from the decisions of the chair. When he rises and announces his appeal, the presiding officer says, "The decision of the chair is appealed from; the question before the assembly is, Shall the decision of the chair be sustained?" This question is debatable; and here the general rule is relaxed, and the presiding officer, without leaving his place, takes a part in the debate. Usually, he begins it by stating the reasons for his decision; the member who appeals follows him, with his reasons for dissenting. Then the debate goes on. When it closes, the presiding officer puts the question, "Shall the decision of the chair be sustained?" and, according to the result, he reasserts his decision or reverses it.

## CHAPTER XXII.

### RECONSIDERATION.

AFTER any vote has passed, a member may move for its reconsideration. It is a general rule or usage that only one who has voted with the



majority can move for a reconsideration. The reason for this rule is, that if no one of the majority is disposed to reconsider the vote, it may be supposed that if the vote were again taken it would pass by the same majority. The objection to this rule is, that after a vote has passed in a small meeting, members enough may come in who, had they been present and voted before, would have made a majority on the other side, and who would now reverse the vote. Practically, a member of a minority, wishing, for such reason, or any other good reason, to have the vote retaken, finds some member of the majority who will put the motion for him. In permanent assemblies there are generally rules on the subject of reconsideration; as that it cannot be made but once, or cannot be made unless within a certain short time after the vote passed. It may happen that a member voting with the majority will move at once a reconsideration, for the very purpose of preventing a reconsideration; for if the reconsideration is refused, which it will probably be when voted upon by the same persons, the vote is put beyond reach of reconsideration. If one who voted with the majority moves for reconsideration, intending to vote against it, and desiring thereby only to prevent a later consideration of the question, any member may move to lay the motion for reconsideration on the table. If the assembly is willing to do this, this motion may be called up at any time afterwards.

A member desiring reconsideration, but not wishing the vote taken at the time, may move for a reconsideration, and then move that his motion be laid on the table; and if this is done he can then call it up when he will.

## CHAPTER XXIII.

### OF A BILL.

A BILL, in parliamentary law, means an instrument which is intended to become a law. Before it can be this it must pass through sundry stages, which are devised to secure to the measure sufficient consideration and delay. These stages are not everywhere the same. Commonly they consist of three several readings, of engrossment, and of enactment.

A bill may be reported by a committee, of its own accord, or because it was instructed by the assembly to report such a bill; or any member may ask leave to offer a bill. When reported or offered, it is read the first time, usually without objection. It then passes into the orders of the day. When it comes up in its turn, or is called up, the presiding officer, naming the bill by its title, puts the question, "Shall this bill have its second reading?" At this time it may be debated and negatived; but usually it is not debated at this stage, and is sometimes read only by its title. It takes its place again in the orders of the day, and when it comes up for a third reading, it is usually debated, if at all. If it receives a third reading, the question is put (usually the next day), "Shall this bill be now engrossed?" This is seldom debated. If it is ordered to be en-

grossed, it then goes to the other house ; and if there it passes through the same stages, it goes to the committee of that house on engrossed bills. When they report that it is well and truly engrossed, it is returned to the house, and the question is there put, " Shall this bill be enacted?" If this be voted, it is sent to the senate, and if enacted there, is sent to the executive for his approval and signature.

There is usually a standing committee on bills in the third reading, and another on engrossed bills. The bill may be sent to either of these at the proper stage, or to any other committee, standing or special, or disposed of in any way, as the house shall choose. Sometimes, if there be no objection, a bill when presented is read twice (once usually by its title), and then sent to an appropriate committee, or otherwise disposed of.

After the bill has received the consent of the executive, or, if he vetoes it, is passed by the legislative body by the requisite majority over his veto, it becomes a statute or a law.

## CHAPTER XXIV.

### THE PRESERVATION OF ORDER.

It has been already said that the rules of procedure of a deliberative body are intended to preserve order, and are wisely adapted to that purpose. The importance of a due regard to them is obvious, for without order it is impossible that the deliberations of any meeting should be useful or lead to any good result.

It has been also intimated that the most important thing of all is that, on the one hand, the presiding officer should know his duty, and discharge it fearlessly, promptly, and impartially ; and, on the other hand, that the assembly or meeting, of whatever kind it may be, should sustain the presiding officer by obedience to his ruling, and by compelling obedience on the part of the refractory and disorderly. We have already seen that the whole meeting, and every member of it, has it in their and his power to rectify any mistake or misdoing of the presiding officer in an efficient and orderly way, by an appeal properly conducted. If there be no such appeal, the only thing that remains is obedience. Undoubtedly there may be cases where the presiding officer mistakes his duty, or misuses his power ; then let there be an appeal ; but if there be no appeal, it must be far better to submit to the temporary and probably slight mischief resulting from his error, rather than throw the whole meeting into disorder, and cause the chaotic confusion which must ensue when the directions of him who should guide the meeting are wholly disregarded.

It has been said that the rules of order are the results of centuries of experience and of general consent ; and it may therefore be believed that they are as well devised as any can be, for the preservation of order. But that they sometimes fail in this — as any rules must — cannot be denied.

It may happen that a number of persons who are determined to delay, obstruct, and embarrass the procedure of an assembly, may do this through

the application of the very rules of order. This practice has now grown so common and well known as to require a name for it; and a name has been drawn from other practices, not disreputable only, but criminal. That name is filibustering. But in a treatise on the rules of order, it cannot be necessary to say more of this practice than that it is simply a complete perversion of order into disorder.

# GLOSSARY

OF

## LAW TERMS IN COMMON USE.

---

### A.

**ABANDONMENT.** A surrender of rights to property, or of property, by one person to another. Used in marine insurance, when the insured, having been paid as for a total loss, abandons what is left or saved of the property to the insurers.

**ABATE.** Literally, to throw down. Applied principally to nuisances, and then means their prostration or removal.

**ABET.** One abets another to commit a crime, by encouraging, commanding, procuring, or counselling him thereto.

**ABDUCTION.** Forcibly taking away or detaining a man's wife or child.

**ABSCOND.** To go out of the jurisdiction of the courts, or conceal one's self, for the purpose of avoiding their process.

**ACCEPTANCE.** The reception of something offered by another with the purpose of retaining it; or of an order given by another. See chapters on AGREEMENTS, SALES, and NOTES AND BILLS.

**ACCESSION.** The right by which one holds all of one's own property together with all of that which has become united to it, naturally or artificially.

**ACCESSORY.** In criminal law, means one who is concerned in the perpetration of an offence, before the fact, by procuring, counselling, or commanding another to commit it; or, after the fact, one who, knowing the crime to have been committed, relieves, comforts, or assists the criminal.

**ACCRETION.** The increase of real estate by portions of soil that are added to it through the operation of natural and gradual causes.

**ACCRUE.** To grow from, or to be added to, as interest accrues on the principal.

**ACKNOWLEDGMENT.** The act of declaring an act or deed to be his by one who executed the same. There are various ways of making an acknowledgment. See chapter on PURCHASE AND SALE OF REAL PROPERTY, and forms annexed thereto.

- ACT OF GOD.** An accident which arises from a cause that operates without the interference of or aid from man. See chapter on **CARRIAGE OF GOODS**.
- ACTION.** Literally, a doing of any thing. In law, it means a demand, made according to the rules of law, in a court of justice, of property, or a right to property, from some other person. The word "suit" is sometimes used in the same sense.
- AD LITEM.** Literally, for the suit. Every court has power to appoint a guardian for the suit for one who needs such assistance.
- ADJOURNMENT.** Literally, putting off to another day. Generally applied to assemblies, who either adjourn without day or finally, or else to a day then or previously determined.
- ADMINISTRATOR and ADMINISTRATION.** See chapter on **EXECUTORS AND ADMINISTRATORS**.
- ADMIRALTY.** A court of admiralty has a large and, for some purposes, an exclusive jurisdiction over maritime causes, civil or criminal.
- ADULTERY.** Sexual intercourse of a married person with a person who is not the criminal's husband or wife.
- ADVANCEMENT.** A gift from a parent to a child by anticipation of the whole or some part of what that child would naturally inherit on the death of the parent.
- ADVERSE POSSESSION.** Possession or enjoyment of land under such circumstances as indicate that the land is claimed and enjoyed as the possessor's. If such possession has been continued for twenty years, the law generally raises the presumption that it was rightful.
- ADVOCATE.** One who assists or makes a plea or an argument for a party to an action in court.
- AFFINITY.** The connection or relation caused by marriage between each of the married persons and the kindred of the other.
- AFFIRM, AFFIRMATION.** They who have conscientious scruples against taking an oath are now generally permitted to affirm, "under the pains and penalties of perjury;" the affirmation being substituted for the oath.
- AGENCY.** See chapter on **AGENCY**.
- ALIAS.** Means, literally, otherwise, or at another time. A man is said to be named John Smith, *alias* Richard Roe; and if an execution is returned unsatisfied, an *alias* execution is issued.
- ALIBI.** Presence in a place different from that before described or alleged; as, when a man charged with an offence committed at a certain time and place proves an *alibi*; that is, that he was somewhere else at that time.
- ALIEN.** A person of foreign birth.
- ALIMONY.** See chapter on **MARRIAGE AND DIVORCE**.
- ALLEGIANCE.** The obligation or duty which holds a citizen or subject to his government or sovereign. See chapter on **NATURALIZATION**.
- ALLUVION.** The increase of earth on the shore of the sea or the bank of a river, caused by the water, acting slowly and gradually. If the increase is sudden and violent, and the land can be traced back to that from which it is torn, it is said to belong to the original owner.

**AMBASSADOR.** One sent abroad by some sovereign, prince, or State on public business. Public ministers are of different ranks. First, ambassador; then, minister plenipotentiary and envoy extraordinary; then, minister resident; then, *chargé d'affaires*. This country has never sent or received an ambassador.

**AMBIGUITY.** Literally, doubtfulness. If it be *latent*, that is, only discovered by evidence bearing on an instrument, it may be cured or explained by evidence; if it be *patent*, that is, apparent on the face of the instrument, it cannot be explained by evidence, but makes the instrument inoperative as far as the ambiguity extends.

**ANCESTOR.** In law, one who has preceded another in a direct line of ascent.

**ANNUITY.** A sum of money which is to be paid to another for a certain term. When this annuity is charged upon land, it is called a rent-charge.

**ANTENUPTIAL.** This word is applied to bargains and settlements made before and with a view to an expected marriage.

**APPEAL.** The removal of an action at law from an inferior court to a higher court by a party seeking a review or new trial. The party appealing is the appellant, the other party is the appellee. For the use of the word in deliberative assemblies, see Rules of Order.

**APPRAISEMENT.** An accurate valuation of property. This word is mainly used in probate matters.

**APPRENTICE.** See chapter on APPRENTICESHIP.

**APPROPRIATION.** See chapter on PAYMENT.

**APPROVER.** A word much used in English criminal law, but not so much in this country. It means one who confesses himself guilty of a crime, and accuses others for the purpose of saving himself. Here such a person is commonly said to be or to give State's evidence.

**APURTENANCES.** Things which belong to another or principal thing, as incident to the principal thing, and which pass or go with the principal thing when that is conveyed or transferred. Mainly applied to land, but sometimes to a ship.

**ARISTOCRACY.** A government in which a class of men have supreme and exclusive authority.

**ARRAIGN.** A prisoner is arraigned when he is called to the bar of a court to answer the charge in the indictment or complaint.

**ARRAY.** The whole number of persons who are summoned to court to serve as jurymen. From the whole array are selected those who serve on the several juries.

**ARREST.** The seizing of a person, and depriving him of his liberty, by legal authority and process.

**ARSON.** The malicious burning of the house of another person. Some part of it must be burned; but the word "house" here comprehends all out-houses, such as barn or stable, cow-house, and the like, which belong to the house, and are within the *curtilage*, or the common fence, which includes them all.

**ARTICLES.** The specific divisions of a document or instrument, written or printed. Thus the name was given to the articles of confederation which

preceded our Constitution. Articles of impeachment are the specific allegations charged against the impeached. Articles of partnership are the specific agreements of the parties. Articles of war is the name given to the code of laws, established for the government of the army, and to that for the government of the navy.

**ASSASSINATION.** Is, in law, murder committed for hire, and with no personal cause moving from the murdered to the murderer.

**ASSAULT.** An illegal and forcible attempt or offer to do a bodily harm to another. See **BATTERY**.

**ASSIGN.** To transfer or make over to another. See chapter on **ASSIGNMENTS**.

**ASSURANCE.** Used in commercial law as the equivalent of insurance. So of assured and assurer. The name "assurance" is sometimes given to an instrument which confirms the title to an estate.

**ATTAINDER.** See chapter on the **CONSTITUTION**.

**ATTORNEY.** One who has been put by some person in his place or stead, with authority to manage some business for him. See chapter on **AGENCY**. An attorney-at-law is an officer in a court of justice who has been admitted to practise there.

**AUTHORITIES.** The decisions of courts which are referred to as declaring or confirming some point of law.

**AUTHORITY.** The delegation of power by a principal to some person as his agent or attorney. See chapter on **AGENCY**.

**AVERAGE.** A term mainly used in marine insurance. A general average loss is, in insurance and shipping law, a loss purposely incurred or sustained for the common benefit of the ship, freight, and cargo; all three of which interests contribute to make up the loss, in proportion to their respective values incurring the same danger and escaping from it. Particular average is a loss on either the ship, the cargo, or the freight, and is borne by the owner or insurer of that interest; it is often called a partial loss.

**AWARD.** See chapter on **ARBITRATION**.

## B.

**BAIL.** This word commonly means those persons who become sureties for the appearance of a defendant in court, and to whom he is delivered. The powers of bail over a defendant are very great. When they are provided with the proper instrument from the court, they may arrest him wherever he is, although in a different State, or whatever he may be employed about, even on Sunday, and may do whatever is necessary to get at him; and they may command the assistance of the sheriff and other civil officers.

**BAIL-BOND.** This is the bond by which the bail become securities for the defendants. Our Constitution prohibits the requiring of excessive bail.

**BAILMENT.** The putting something into the hands of another, or delivering it to him. The bailor is he who delivers; the bailee, he to whom

delivery is made. If the bailment be for the exclusive benefit of the bailor, the bailee is responsible only for injury happening from his gross negligence; if it be for the exclusive benefit of the bailee, he is responsible for slight negligence; if for the benefit of both parties, he is responsible for ordinary negligence, or the absence of ordinary care.

**BANK-NOTE, OR BANK-BILL.** See chapter on NOTES AND BILLS.

**BANKRUPT.** One who refuses or is unable to pay his debts. We have now a national bankrupt law, which provides the means by which all the property of such a person is divided equitably among all his creditors.

**BANNS OF MATRIMONY.** A public notice or declaration of the intention of a man and woman to marry each other; the purpose being, that persons objecting to the marriage may have an opportunity to interpose their objections before the marriage takes place.

**BAR.** A bar to an action is a perpetual and sufficient obstacle. The word also means the whole collective body of the members of the legal profession in a county, city, or State.

**BARGAIN AND SALE.** This phrase is applied in law to a contract between two parties, by which land is sold and transferred.

**BARRISTER.** This name is given in England originally, and was formerly given in this country, to lawyers admitted to the bar, or to conduct and argue cases in court; but it is not now much, if ever, used in this country.

**BASTARD.** One who is born of an unlawful connection; an illegitimate child. In many of our States, a child of parents who afterwards marry and acknowledge him or her as their own is legitimated.

**BATTERY.** Any unlawful beating or personal violence, however slight. Spitting in one's face may be a battery.

**BED.** The bed of a stream is that part between the banks which is occupied and covered by the water when it does not spread over and beyond its banks.

**BENEFIT OF CLERGY.** In England, a clergyman was exempt from the punishment of death; and in ancient times, any one who could read was entitled to this benefit.

**BEQUEATH.** See chapter on DISTRIBUTION OF PROPERTY.

**BIGAMY.** The knowingly marrying a second time when a former marriage still exists.

**BILL.** A complaint in equity or chancery addressed to the chancellor, or to a court of equity, and containing the particulars of the action.

**BILL (in legislation).** See RULES OF ORDER.

**BILL OF EXCHANGE.** See chapter on NOTES AND BILLS.

**BILL OF LADING.** A receipt for the carriage and delivery of goods, to be carried by sea, for a certain freight. See chapter on CARRIAGE OF GOODS.

**BLASPHEMY.** In law, any false statement or language intended as a reviling of God.

**BLOCKADE.** The actual investment of a place by an enemy with a force sufficient to cut off communication, or make it difficult and hazardous.

**BONA FIDE.** In good faith; honest.



- BOND.** A written and sealed obligation. See chapter on BONDS.
- BOTTOMRY.** A kind of mortgage of a ship, for money borrowed. It pledges the ship with extraordinary interest, the lender losing his money if the ship be lost.
- BOUGHT AND SOLD NOTES.** Memoranda in writing given by a broker who has made a sale, to him for whom the broker sells, and to the buyer, describing the goods and stating the terms of the sale.
- BREACH.** In the law of contracts, is the violation of an agreement or obligation.
- BURGLARY.** The breaking and entering the house of another in the night-time, with the intent to commit a felony therein.
- BY-LAWS.** Every corporation has a right to make rules for its own government; and these are by-laws; sometimes spelled bye-laws.

## C.

- CAPIAS.** This is the name of a writ, by which a sheriff is ordered to take a person into his custody, and do with him what this writ requires. It is of many kinds.
- CAVEAT.** A Latin word, meaning "let him beware." This word is principally used in patent law, where one proposing to take out a patent subsequently, may file a *caveat*, that no person may in the mean time obtain a patent for the same thing.
- CHANCELLOR.** A judge who presides over a court of chancery or equity.
- CHARTER-PARTY.** A contract by which the owner of a vessel lets the whole or a part of her to another person for a particular voyage, or a particular time, for the conveyance of goods.
- CHATTEL.** This word commonly means goods of any kind, or every species of personal property.
- CHATELS REAL.** Interests annexed to or concerning real estate, less than a freehold; as a lease for years.
- CHECK.** See chapter on NOTES AND BILLS.
- CHOSE IN ACTION.** The right to demand and recover a debt or money. This word is sometimes applied to the evidence of the right, as bills of exchange, promissory notes, bank-bills, and other instruments.
- CIVIL LAW.** By this phrase is usually meant the system of law of ancient Rome.
- CLEARANCE.** A certificate which the collector of a port gives to the master of a vessel, stating where it is bound to, and that he has entered and cleared the vessel according to law. A vessel found at sea without a clearance may be legally taken and brought into some court for adjudication.
- CODE.** A body of law intended to embrace and regulate all the rules of law, as far as they are within its scope.
- CODICIL.** A little will which adds to or modifies a former will, but does not repeal it. See chapter on WILLS.
- COLLISION.** The striking together or running against each other of vessels.

- COLLUSION.** A fraudulent agreement between two or more persons to deprive another of his rights of property.
- COMMON CARRIERS.** See chapter on **CARRIAGE OF GOODS.**
- COMMON LAW.** The system of law prevailing in England and this country, on the authority of usage, or the decisions of courts, and not on statutes. That which depends on statutes is called statute law.
- COMMORANT.** Residing or dwelling in a certain place.
- COMPETENCY.** The legal fitness of a witness to give evidence on the trial of an action.
- COMPOUND INTEREST.** See chapter on **INTEREST.**
- COMPOUNDING A FELONY.** The agreement of one who has suffered from a theft or other crime, that he will not prosecute the criminal if he returns the goods stolen, or compensates for the harm done. Taking a reward not to prosecute.
- CONDONATION.** See chapter on **MARRIAGE AND DIVORCE.**
- CONFIDENTIAL COMMUNICATIONS.** A counsellor, solicitor, or attorney cannot be compelled to exhibit papers or disclose communications received by him in his official capacity.
- CONFISCATE.** To appropriate property to the use of the State which has been forfeited by some offence.
- CONSANGUINITY.** Relationship by blood.
- CONSIDERATION.** See chapter on **AGREEMENTS.**
- CONTINGENT.** That which will come upon the happening of an event which may or may not take place. The word is applied to legacies, damages, and remainders, which words see.
- CONTINUANCE.** The adjournment of an action, or the trial thereof, from one day or one term to another.
- CONTRIBUTION.** If two or more persons are liable jointly for a debt, and one is compelled to pay the whole, or more than his share, he may call upon the others to contribute their proportion.
- CONVEYANCE.** The transfer of lands or vessels from one person to another.
- CONVEYANCER.** One whose business it is to draw instruments of conveyance.
- COPYRIGHT.** The exclusive privilege of printing, publishing, and selling copies of copyrighted books, writings, drawings, and sundry other similar things, which the law of copyright describes.
- COUPONS.** From a French word, meaning to cut. They are little papers attached to bonds or other instruments, each one promising to pay the interest due on certain days, and it is cut off and presented for payment when due.
- COVENANT.** See chapter on **DEEDS.**
- CROSS-EXAMINATION.** Examination of a witness by a party who did not call him. A party who calls a witness on a trial examines him in chief; and when he has finished, the other party has a right to cross-examine him.

## D.

- DAMAGES.** The sum claimed or recovered by one who has sustained an injury in person, property, or rights, from him who has caused the injury.
- DECLARATION.** A specification filed in an action, stating the circumstances on which the plaintiff founds his claim.
- DEDICATION.** This word means, in law, an appropriation of land to a public use, either by deed or declaration, or by acquiescence for a sufficient time in the public use.
- DEED.** See chapter on DEEDS.
- DEFEASANCE.** An instrument which defeats the force and effect of some other instrument, on some condition or contingency. If a deed be made of land, and a deed of defeasance received back, the two together make a mortgage. See chapter on MORTGAGES.
- DEMESNE.** Lands which the owner holds in absolute property, and not of another.
- DEMISE.** A conveyance of land. This word is also sometimes used as synonymous with death; as the demise of a king.
- DEMURRER.** A plea or allegation by a party to an action, that, even if the facts be truly stated by the other party, they do not give him any cause of action, or any good defence.
- DENIZEN.** An alien born, who has letters-patent from the sovereign which give him the right of a subject. In this country the word "citizen" is almost exclusively used.
- DEPOSIT.** A delivery of goods, to be kept for the benefit of the depositor, and subject to his order, without compensation.
- DEPOSITION.** The testimony of a witness, which has been reduced to writing in accordance with the requirements of law.
- DERELICT.** Deserted; abandoned. Applied in law principally to vessels deserted by their crew, with no purpose of returning.
- DESCENT.** Succession from parents or ancestors. For the rules of descent, see chapter on the DISTRIBUTION OF PROPERTY.
- DETAINER.** Keeping goods or other property from the owner against his will; or holding a person against his will.
- DEVIATION.** In the law of marine insurance, means a departure from or variation of the risks insured against by the policy, without sufficient cause.
- DISBAR.** To expel from the bar one who has been admitted to practise within it. See BAR.
- DISHONOR.** In commercial law, means the non-payment of negotiable paper when it is due.
- DISTRESS.** The process made use of for enforcing the payment of rent, or other dues, by the taking of personal chattels from the non-payer.
- DIVORCE.** See chapter on MARRIAGE AND DIVORCE.
- DOMAIN.** The estate or land lying about a mansion-house, and attached to it.

- DOMICILE.** See chapter on **LAW OF PLACE.**
- DOMINANT.** See **SERVIENT.**
- DORMANT.** See chapter on **PARTNERSHIP.**
- DOWER.** A widow has her dower, which means an estate for life in one-third part of the lands or tenements of her husband.
- DRAWBACK.** An allowance or return made by government to merchants, on the re-exportation of certain goods liable to duties and entitled to drawback.
- DRAWER, DRAWEE, DRAWING.** For these words see chapter on **NOTES AND BILLS.**
- DUE-BILL.** A mere acknowledgment in writing of a debt.
- DURESS.** Personal restraint or compulsion, or fear thereof.

## E.

- EARNEST.** The delivery and acceptance of a part of the price of goods sold, to show that the parties are in earnest and to make the contract binding.
- EASEMENT.** A right which the owner of one parcel of land has over the land of another, for some special purpose, as air, light, way, or drainage.
- EMBEZZLEMENT.** Fraudulently appropriating to one's use property with which the party has been intrusted.
- EMBLEMENTS.** The right of a tenant, when his tenancy has ended, to return and take and carry away the product of land which he planted during his tenancy.
- EMINENT DOMAIN.** See chapter on that subject.
- ENACT.** To make a law, or establish by law. Laws usually begin, "Be it enacted." See Rules of Order.
- ENFRANCHISE.** To give to any man freedom in a society or body politic.
- ENTAIL.** An estate is entailed when it is limited or restricted to a particular class of issue, and not to the heirs general.
- EQUITY.** A branch or method of remedial justice, administered in courts of equity. This was originally administered as the court thought just and reasonable in any case; but the system of equity law is now, as well defined and exact as that of common law.
- EQUITY OF REDEMPTION.** See chapter on **MORTGAGES.**
- ESCHEAT.** A reverting of lands to the government, on the entire failure of heirs of a deceased owner.
- ESCROW.** A deed which is delivered to a stranger, for him to deliver to the grantee therein named, on the happening of certain conditions.
- ESTATE.** This word means, in law, the kind, quantity, and extent of interest which a person has in real property; as the estate in fee, when he owns it absolutely, or an estate for life, or an estate for years.
- EVICTION.** Depriving a person of the possession of lands or tenements by judgment of law.
- EVIDENCE.** All the means by which any matter of fact that is alleged is established, or is disproved.

- EXCISE.** Tax paid on the retail sale, or on the consumption of, certain commodities.
- EXPERTS.** Persons who are selected by the parties in a case, to give evidence on some point by reason of their peculiar knowledge or skill therein.
- EXTORTION.** Is, in law, the unlawful taking by an officer, of money, or any thing of value not due to him, by an abuse of his office.
- EXTRADITION.** The surrender or delivery by one sovereign State to another of persons charged with the commission of crime, within the jurisdiction of the requesting State. Extradition between our States is regulated by the national constitution and laws. We have also treaties of extradition with many foreign States.

## F.

- FALSE IMPRISONMENT.** An unlawful restraint of a man's liberty, in any place, or by any means whatever, even by words only.
- FEE-SIMPLE.** The largest estate a man can have in land. He can dispose of it at his pleasure, and when he dies, it goes to his heirs or devisees.
- FEE-TAIL.** An heritable estate, which is limited to certain classes of heirs of the body.
- FELONY.** In the law of this country it means generally any great crime. In some States it is defined by statutes.
- FEME COVERT.** A married woman.
- FEUDAL LAW.** Sometimes spelled feodal law. A system of tenures, by which real property was held in western Europe during the Middle Ages, and which has remained there to some extent to the present day, although for the most part abolished.
- FIDUCIARY.** A fiduciary estate or property is that which a person holds in trust for some other person, who is the beneficiary.
- FIRM.** This word sometimes means the name under which the members of a partnership transact business, and sometimes means the members who compose the partnership.
- FLAG.** By a statute of 1818, the flag of the United States consists of thirteen horizontal stripes, alternate red and white, while the Union (or that part of the flag in the corner of it) was to have twenty stars, with one star more for every State admitted thereafter.
- FORECLOSE.** Literally, to shut or bar out. It is used in law to describe a process made use of for the purpose of putting an end to an equity of redemption.
- FOREIGN ATTACHMENT.** As commonly used, this means the process by which a creditor gets the property of his debtor placed by him in the hands of another; or money due from that other to his debtor.
- FORNICATION.** Sexual intercourse of an unmarried person with a married or unmarried person.
- FRANCHISE.** A privilege, or right, conferred by grant from government upon individuals.

- FRAUD.** The unlawful appropriation of the property or rights of another, knowingly and designedly.
- FREEHOLD.** An estate of inheritance or for a life; a larger estate than an estate for years or at will.
- FREIGHT.** Means, in maritime law, either the amount paid for the carriage of goods, from one port to another, or the goods which are so carried.
- FUGITIVE FROM JUSTICE.** A criminal who seeks to escape punishment by fleeing from the jurisdiction within which the crime was committed.
- FUNGIBLE.** An article loaned, but to be consumed by the borrower, as food, clothing, and the like.

## G.

- GARNISHEE.** One who has in his hands money or property belonging to a defendant, and attached by a process of foreign attachment, which see.
- GIFT.** See chapter on GIFTS.
- GOOD-WILL.** The benefit arising from the successful conduct of business by a certain person or firm, usually in a certain place; it is a property subject to transfer.
- GOODS AND CHATTELS.** This word in contracts includes, with all personal property in possession, *choses in action*, and chattels real.
- GRANT.** A word which is applicable to all transfers of real property.
- GROUND-RENT.** A rent which the owner of unimproved land reserves when he leases the land to be built upon.
- GUARANTY.** A promise or undertaking to answer for the liability of another. Guarantor is he who makes the guaranty; the guarantee is he to whom the guaranty is made.
- GUEST.** A guest at an inn is distinguished from a boarder, in that he makes no contract to remain or pay for a certain time. If he make such a contract, he is not a guest, but a boarder, although at an inn; and the innkeeper is not liable for loss or injury to his goods without the innkeeper's fault. He is so liable to a guest.

## H.

- HALF-BLOOD.** The degree of relationship existing between those who have the same father or the same mother, but not both.
- HEARSAY EVIDENCE.** A statement which a witness makes of what he was told by some other person, or heard him say, but does not know himself.
- HEIR.** In this country the word is applied to all persons who are called to the succession of property.
- HEIR-APPARENT.** One who must succeed to the inheritance, provided he outlives the ancestor.

**HEIR-PRESUMPTIVE.** One who will succeed to the inheritance if he outlives the ancestor and no person is born before the ancestor's death who has a nearer claim.

**HEREDITAMENT.** Any thing capable of being inherited.

**HIGHWAY.** A street or road, or way by land or water, which all citizens have a right in common to use.

**HOMESTEAD.** In this country, that portion of land belonging to the same owner, which the law exempts from liability to debt.

## I.

**ILLICIT.** That which is forbidden by the law.

**IMPEACHMENT.** See chapter on IMPEACHMENT.

**IMPERTINENT.** This word means, in law, matters introduced into any proceeding in a suit which are not properly before the court in that stage of the proceeding.

**IMPOSTS.** Duties or taxes laid upon imported goods or merchandise.

**INDEMNITY.** Compensation for damage suffered, or that which is given or promised to a person to prevent his suffering damage.

**INDENTURE.** A written and sealed instrument between two or more persons, each of whom has a copy. It is distinguished from a deed-poll, which is made by one person only.

**INDICTMENT.** A written accusation, made by the government through the proper officer, and presented as true by a grand jury.

**INDORSE, INDORSEMENT, and INDORSER** (sometimes spelled endorsement). See chapter on **BILLS AND NOTES**.

**INFANT.** In law, is one under the age of twenty-one years. See chapter on **INFANTS**.

**INFORMATION.** A complaint or accusation against a person, charging him with some offence, presented to a court having jurisdiction by a proper officer. It differs from an indictment in that it does not require the intervention of a grand jury.

**INFRINGEMENT.** In patent law, means the act of violating the right secured by a patent or copyright.

**INJUNCTION.** A prohibitory writ, issued by a judge or court having jurisdiction, forbidding the doing of some specified act.

**INQUEST.** A body of men authorized by law to inquire into certain matters. A grand jury is often called the Grand Inquest.

**INSOLVENCY.** In this country, means much the same as bankruptcy; inability to pay one's debts.

**INSURANCE.** By a contract of insurance, the insurers, for an agreed premium, promise to indemnify the insured against loss by marine perils, or by fire, or accident, or the death of a life-insured.

**INTERNATIONAL LAW.** That system of rules which Christian and civilized States acknowledge to be binding upon them in their conduct towards each other, and to the subjects or citizens of each other. It is founded upon moral right, and not upon any controlling and sovereign authority.

- INTESTATE.** One who dies without a valid will.
- INVENTION.** In patent law, signifies, strictly, the finding out and making of something which is new, or which will accomplish a new use.
- INVOICE.** In commercial law, signifies a paper which describes the merchandise sent by consignors to consignees, with marks or numbers designating each package.
- ISSUE.** In the law of descent and distribution of property, includes all those who have descended from the common ancestor. In pleading, this word means a single and certain point material to the action affirmed by one party and denied by the other.

## J.

- JETTISON.** Sometimes called jetsam. The throwing overboard of a part of the cargo to relieve the vessel. Sometimes it means the things so thrown over.
- JOINTURE.** An estate or interest in lands or tenements which will take effect when the husband dies, for the benefit of the wife, and during her life.
- JUDGMENT.** The final conclusion, or decision, or sentence of the law, pronounced by a competent court, as the final result of proceedings instituted therein.
- JURISDICTION.** The right and power of a court lawfully to hear and determine the cause before it, and enforce the execution of their judgment.
- JURY** (grand or petit). See chapter on **JURY**.
- JUSTICE.** As a title, is used in this country as synonymous with judge.

## L.

- LACHES.** Negligence.
- LANDLORD AND TENANT.** See chapter on **LEASES**.
- LAPSED LEGACY.** A legacy lapses if the legatee dies before the testator; that is, it becomes void, unless the legacy is in words of inheritance, as to A B and his heirs, in which case it survives to the heirs.
- LAW-MERCHANT.** The body of rules and usages in force in matters of commerce.
- LEASE.** See chapter on **LEASES**.
- LEGITIMATE CHILDREN.** Those born in wedlock.
- LEVY.** This word means to raise, as to levy a tax; or to begin, as to levy war. In practice, it commonly means the obtaining the money for which an execution has been issued.
- LIBEL.** See chapter on **LIBEL AND SLANDER**.
- LIEN.** A hold which one person has upon the property of another by way of security for a debt or claim.
- LIMITATIONS.** See chapter on **LIMITATIONS**.



**LIQUIDATE.** To pay ; to settle an account. Liquidated damages are damages agreed upon in anticipation of the breach for which they shall be paid.

## M.

**MALFEASANCE.** The doing of some injurious act, which the party had no right to do.

**MALICIOUS PROSECUTION.** A civil or criminal suit, instituted maliciously and without probable cause.

**MANDAMUS.** A writ issued by the highest court of general jurisdiction in a State, ordering some person, corporation, or inferior court to do the thing therein specified, which belongs to their office or duty.

**MANIFEST.** A written statement of a cargo of a commercial vessel. It is required by law in this country.

**MANSLAUGHTER.** The killing of another, which is unlawful, but without malice aforethought.

**MANUMISSION.** Making a slave free.

**MARKET OVERT.** An open or public market, legally constituted. It is nearly unknown in this country, or rather every store, shop, or place of sale is a market overt here.

**MAYHEM.** Depriving a person with force, and unlawfully, of a member, the loss of which makes him less able to fight with an adversary; as his eye, hand, finger, or foretooth. The common word *maim* is derived from this, but has a less limited meaning.

**MAYOR.** The chief executive magistrate of a city.

**MESNE.** Middle or intermediate. Mesne profits are those which a man draws from an estate from the time that he obtained possession to the time when he was evicted, by one having a better title.

**MISDEMEANOR.** This word includes offences punishable by indictment, and inferior to felony; such as perjury, conspiracy, libel, and battery.

**MISFEASANCE.** The doing in a wrongful and an injurious way an act which might lawfully be done in a proper manner.

**MISREPRESENTATION.** This word signifies, in law, a statement which a party to a contract makes concerning it, and which he knows to be untrue.

**MOIETY.** The half of a thing.

**MONITION.** A process like a summons, used in this country in admiralty courts.

**MORTGAGE.** See chapter on MORTGAGES.

**MORTMAIN.** Literally, a dead hand. In England, real property granted or devised to a religious corporation could not pass out of its possession by death, because a corporation does not die; and statutes of *mortmain* were passed, impeding such grants or sales.

**MOVABLES.** Personal chattels which a man can carry with him wherever he goes.

**MULCT.** A fine imposed for some offence.

**MUNICIPAL.** Of or belonging to a city; but municipal law is the name given to the system of law of any one nation or State, as distinguished from international law.

**MURDER.** The wilful killing of any person with malice aforethought. In most of our States murder is defined as of various degrees, according to the circumstances which indicate the character of the malice.

**MUTINY.** The unlawful resistance of a superior officer by sedition or revolt, in the army or navy, or on board of any vessel.

## N.

**NATURAL CHILDREN.** Children born out of wedlock.

**NATURALIZATION.** See chapter on NATURALIZATION.

**NAVIGABLE.** All navigable waters are subject to the use of the public, as navigable highways, the soil beneath them remaining the property of the riparian proprietors, or of the State. Navigable waters are in this country held to be all those capable of floating vessels, boats, logs, rafts, or any products of the country through which they flow.

**NISI PRIUS.** A *nisi prius* term is that held by a court for the trial of cases by a jury.

**NONAGE.** Minority, or a less age than twenty-one years. See chapter on INFANTS.

**NONSUIT.** Usually means an abandonment of his cause by the plaintiff, whereupon a judgment is entered against him.

**NOTARY PUBLIC.** An officer, appointed variously under the laws of different States, whose acts are respected by the law-merchant and the law of nations, and hence have force out of their own State or country.

**NOVATION.** The substitution of a new debt or obligation for a former one, which it extinguishes.

**NUNCUPATIVE WILL.** A will declared orally before witnesses, by a testator when dying, and afterwards reduced to writing.

## O.

**OBLIGATION.** In law, is much the same thing as a bond. Obligor is he who enters into the obligation; obligee, he in whose favor it is contracted.

**ORDINANCE.** A rule, or order, or law. Usually applied to the laws of a city.

**ORDINARY.** The name given in some of our States to the officer elsewhere called a surrogate or judge of probate.

**OUTRAGE.** A great wrong or injury to the person, property, rights, or honor of another.

## P.

**PANDECTS.** The name of a compilation of the civil law, made by the Emperor Justinian, A.D. 533. It is sometimes called the Digest.

**PANEL.** Usually means, in law, the body of jurors who are impanelled to try a case; also the whole list returned by the sheriff.

**PART OWNERS.** In law, is usually applied to two or more persons, who are not partners, but who own a vessel together.

**PARTIAL LOSS.** See AVERAGE.

**PARTITION.** The division of lands, tenements, or hereditaments, goods and chattels, between persons who own them as co-proprietors. It is usually applied to the division of estates among such persons.

**PARTNERSHIP.** See chapter on PARTNERSHIP.

**PASSPORT.** A document by which the Secretary of State certifies that the bearer, who is described therein, is a citizen of the United States.

**PATENT, or LETTERS-PATENT.** Is the grant by the government to some person of an exclusive right to make and sell some new and useful invention made by him. He to whom a patent is granted is called a patentee.

**PAYMENT.** See chapter on PAYMENT.

**PENITENTIARY.** A prison or place of confinement for convicted criminals.

**PER CAPITA.** A Latin phrase, opposed to *per stirpes*. Descendants of a deceased take *per capita* when they are all counted as individuals, and they take *per stirpes*, or *by right of representation*, when a certain number of them take together what their deceased parent would have taken.

**PEREMPTORY CHALLENGE.** A challenge of a juror, which means a refusal to permit him to sit on the trial, allowed to certain criminals without showing cause, up to a certain number of jurors.

**PERILS OF THE SEA.** A phrase used in bills of lading, and in policies of insurance, which includes all the dangers naturally incident to navigation. It has been held in this country to mean and include *perils of the river*.

**PERISHABLE GOODS.** Goods which easily decay and lose their value by being kept. Mainly used in insurance law.

**PERJURY.** A wilfully false statement, by one who is lawfully required to depose the truth, and who is lawfully sworn, made in a judicial proceeding, and in relation to a matter that is material to the point in question.

**PIRACY.** Any forcible robbery or deprivation, on the high seas, done without lawful authority, and with wrongful purpose. A pirate is considered in law the enemy of the human race, and all men may attack him.

**PLEA.** In conversation, this word is often used as meaning an argument in court. In law, it means the special written answer, showing why an action is not maintainable.

**PLEDGE, or PAWN.** A bailment or delivery of personal property as security for some debt or undertaking.

**POLICE.** Officers appointed to maintain public peace among persons are called officers of the police; but the word is sometimes used as meaning the general care of a city or other place for the same purpose, or the rules and ordinances made therefor.

**POLICY OF INSURANCE.** The instrument whereby insurance is made against perils of the sea, or fire, or accident, or on life.

**POLL.** An old word signifying head; thus a poll-tax is that imposed upon the people, at so much a head, equally.

- POSSE-COMITATUS.** This means the power of the county. A sheriff or other peace officer has a right to call every male person in the county to his aid, for the purpose of preserving the public peace, excepting only those too infirm of body or mind to assist.
- POST.** After. An instrument is post-dated if it has a date subsequent to that at which it is actually made.
- POST-MARKS.** Are received in law as evidence of the fact and the time of a letter passing through the post-office.
- POUND.** The place which is inclosed by public authority, where stray animals may be placed, until reclaimed according to law.
- PRECEPT.** In law, means a writ directed to some officer, commanding him to do something.
- PREMIUM.** In the law of insurance, is the consideration paid or promised, for the insurance.
- PRESUMPTION.** An inference of the law from certain facts, of some other fact or proposition.
- PRIMA FACIE.** Literally, at the first appearance. *Prima facie* evidence is that which is sufficient to establish a fact, unless it be rebutted or contradicted.
- PRIMOGENITURE.** The right of primogeniture gives an estate to the eldest son in preference to the other children. It does not exist in the United States.
- PRINCIPAL.** See chapter on AGENCY.
- PRIVATEER.** A vessel owned by private individuals, and armed by them, but authorized by a belligerent government to carry on maritime war against the enemy.
- PRIZE.** A vessel or goods of an enemy taken and detained at sea, by the authority of a belligerent power, to be sent into some convenient port for adjudication.
- PROCESS.** The method which the law uses to compel compliance with the commands of a court. In patent law this word signifies the art or the method by which a result that is patented is produced.
- PROCTOR.** In courts of admiralty, what an attorney or solicitor is in other courts.
- PROMISSORY NOTE.** See chapter on NOTES AND BILLS.
- PROSECUTIONS.** The means and method of bringing a supposed criminal to justice by courts of law.
- PROTEST.** The act of a notary public, made on the dishonor of negotiable paper, by which it is declared that all parties to the paper will be held responsible to the holder for all damages. Also, in maritime law, a statement by the master of a vessel, duly attested by a competent person, in which the circumstances of a voyage or an accident by which the ship has sustained injury, are fully described.
- PROXY.** A person representing another with the right of voting. It is also used as the name of the instrument by which a person is so appointed and authorized.
- PUTATIVE.** Reputed or supposed to be. The word is most commonly applied to the father of an illegitimate child.

## Q.

**QUASH.** To overthrow, dismiss, or annul legal proceedings.

**QUO WARRANTO.** The writ or process by which the government inquires by what right or warrant a person or corporation holds an office or a right, for the purpose of dispossessing him of it, if not in lawful possession.

**QUORUM.** The number of persons belonging to an assembly, society, or other body who must be present that the business may be lawfully transacted. See **RULES OF ORDER** in the Treatise on that subject.

## R.

**RATIFICATION.** Giving force to a contract made by the person in question but not now in force, or by another man as his agent.

**REAL PROPERTY.** Land and whatever is built upon or growing upon the same, whether it be on or beneath the surface or above the surface.

**RECEIVER.** Usually means a person appointed by a court to take and hold property in dispute, or the property of a bankrupt.

**RECOGNIZANCE.** An obligation of record which a person enters into before a court or officer having authority to receive it, with a condition which requires him to do some specified act; usually, to appear in court at a certain time or on a certain event.

**RECOUPMENT.** A law term, recently introduced into practice, and meaning much the same as a set-off against or a reduction from the claim of a plaintiff.

**REFERENCE.** See chapter on **ARBITRATION**.

**REMAINDER.** When a grant or will creates a particular estate in one person, which will cease on a certain event, and then gives the estate over to another, this latter part of the estate is called the remainder. It may be contingent, when the event may never take place; or vested, when the remainder-man acquires an immediate interest in the estate, although it is to be enjoyed only when the event happens.

**RENT.** See chapter on **LEASE**.

**REPLEVIN.** That form of action by which a plaintiff seeks to recover the possession of personal chattels which have been taken from him unlawfully.

**REPRIEVE.** The withdrawing of a sentence of a criminal, which delays execution for a certain time.

**RESCISSION.** The annulling or dissolution of contracts by mutual consent, or by one party because of the breach of the contract by the other.

**RESCUE.** A forcible deliverance of a prisoner from the custody of the law by a third person.

**RESIDUARY CLAUSE.** That part of the will by which all of the property is disposed of which remains after satisfying devises and bequests. Residuary legacy is the remainder of the property after specific bequests or legacies.

- RESPONDENT.** In equity law, the person who answers to a bill or complaint.
- RETAINER.** Usually means the fee by which a client engages an attorney-at-law to do certain business for him.
- REVOLT.** The endeavor of one or more of the crew of a vessel to overthrow the legitimate authority of those in command.
- RIGHT.** Means, in law, a claim which is founded upon law and fact.
- RIOT.** A disturbance of the peace, by three or more persons conspiring to raise a tumult; or do some wrong thing, in a violent and turbulent manner.
- RIPARIAN PROPRIETORS.** Those who own the land upon the shore or boundary of the sea, or a lake or a watercourse. Generally a riparian proprietor owns the bed of the river adjoining his land, as far as the thread or central line of the stream.
- ROBBERY.** The forcible and wrongful taking from the person of another of goods or money, and putting him in fear. Threats may be violence enough to make the offence robbery.

## S.

- SALE.** See chapter on PURCHASE AND SALE
- SALVAGE.** Property saved from a peril of the sea; or compensation given by an admiralty court for service rendered in saving it.
- SCROLL.** In law, is a mark used in the place of a seal; sometimes spelled scrall.
- SEAL.** An impression upon any impressible substance; or a piece of paper pasted on with intent to make a seal of it.
- SEARCH-WARRANT.** This is addressed to an officer, and requires him to search a house or place therein specified, for property alleged to have been stolen.
- SEAWORTHINESS.** The fitness of a vessel in all respects of materials, equipment, and construction, for the service in which it is employed.
- SEDITION.** Means, in criminal law, the raising of disturbances or commotions in the State.
- SEISIN.** Possession of land by one who claims a freehold interest therein.
- SERVIENT.** In the law of easements, if a certain estate has a right over or against another estate, as a right of drainage through it, the estate to which the right is attached is *dominant*, and the estate against which the right operates is *servient*.
- SET-OFF.** A demand by a defendant, against a plaintiff, by which he seeks to reduce or destroy his claim.
- SIGN or SIGNATURE.** The writing of a man's name, as a sign or token that he assents to the instrument, or that it is his.
- SLANDER.** See chapter on LIBEL AND SLANDER.
- SOLICITOR.** Means, in chancery courts, what an attorney does in other courts.
- SPECIALTY.** A writing sealed and delivered, wherein an agreement or obligation is stated.

**SPECIFIC PERFORMANCE.** The fulfilment or performance of a contract by the party bound to perform it. This a court of equity will compel, if sufficient reasons be shown.

**SPECIFICATION.** In patent law, a specific and detailed account of the invention to be patented.

**STATUTE.** A law enacted by a legislative power.

**STOPPAGE IN TRANSITU.** See chapter on SALES.

**SUBORNATION OF PERJURY.** The inducing or procuring a person to commit legal perjury.

**SUBPENA.** A writ or process summoning a person to appear and give testimony, or to submit himself to what the court may order.

**SUFFRAGE.** The act of voting; the vote itself.

**SUIT.** Synonymous with action at law.

**SUNDAY.** The first day of the week. The legal name of this day is the Lord's day. Generally it begins at twelve o'clock on the night between Saturday and Sunday, and continues twenty-four hours. In some of the New England States it begins at sunsetting on Saturday, and ends at sunsetting on Sunday.

**SURETY.** See chapter on GUARANTY.

**SURROGATE.** A term used in some States to denote the officer in other States called judge of probate or ordinary.

## T.

**TENANT.** See chapter on LEASES.

**TENDER.** A legal tender is that which the law of a State makes competent to be paid as money, and with the effect of money.

**TENURE.** The manner in which or by which a man holds an estate in lands.

**TESTAMENT.** Another name for a will. The testator is one who has made a will.

**TITLE-DEEDS.** Deeds which are evidences of the title of him who owns an estate.

**TORT.** A private wrong or injury other than the breach of a contract.

**TRADE-MARKS.** A mark which a tradesman puts upon goods that he has manufactured, by way of symbol, emblem, or sign that they were made by him or for him, and that he claims an exclusive right to sell them. See chapter on TRADE-MARKS.

**TRESPASS.** Any wrongful act of one person whereby another person is injured.

**TRUST.** Is, in law, a right or a property which one person holds for the benefit of another. The person holding it is called the trustee, and he for whose benefit it is held is called the *cestui que trust*, or, better, the beneficiary.

**TRUSTEE PROCESS.** A process by which goods or credits of a debtor in the hands of a third person may be reached by an attaching creditor; it is similar to the garnishee process. See chapter on RECOVERY OF DEBTS.

## U.

**USURY.** See chapter on **INTEREST AND USURY.**

## V.

**VAGABOND, or VAGRANT.** One who wanders about idly, and with no home, and begs, and will not work.

**VERDICT.** The unanimous decision made by a jury and announced to the court.

**VOUCHER.** The written evidences of the truth of entries or charges.

## W.

**WAIVER.** The abandonment of a right, or a refusal to accept it.

**WARD.** See chapter on **GUARDIAN AND WARD.**

**WARRANTY.** See chapter on **SALES.**

**WAY.** A right of way is the privilege which some person, or a certain description of persons, have of going over another man's land.

**WILL.** See chapter on **WILLS.**

**WITNESS.** One who testifies in court under oath or affirmation to what he knows. Also one who signs his name to an instrument, in evidence that it was executed in his presence; he is then called an attesting or subscribing witness.

**WRECK.** Commonly used as meaning a vessel that is cast away. In maritime law, it means the vessel or goods cast away on land by the sea, or found at low water, between high and low water mark.

**WRIT.** A written precept issued by a competent court in the name of the State, commanding the person or officer to whom it is addressed to do what is required therein. It is usually attested by a judge, and countersigned by the clerk of his court.





# I N D E X.

---

## A.

**ACADEMY**, military, 80.

naval, 80.

**ACCEPTANCE**, rights and duties of the acceptor, 507.

acceptance for honor, 508.

(See **NOTES OF HAND AND BILLS OF EXCHANGE**.)

**ACKNOWLEDGMENT**, how it may be made, 276.

**ACQUISITION OF PROPERTY**, may be in six ways: by inheritance;  
by will; by purchase and sale; by hiring; by gift; by finding, 252.

**ADMISSION OF NEW STATES**, 94.

**AGENCY**, the law of, 512-525.

the acts of an agent are the acts in law of the principal, 512.

a principal is responsible for the acts of his agent, when he has  
given his agent authority, or when he has led those who dealt  
with him to believe that he had authority, 513.

how a general agent differs from a special agent, 513.

the effect and importance of this difference shown, 513.

how authority may be given to an agent, 514.

if given under seal, it authorizes the agent to make a deed for the  
principal, 514.

when given by a written instrument, this is commonly called a power  
of attorney, 514.

authority may be given orally, 514.

one employed by another to act for him in transacting a business,  
has authority to do for his principal all that is usual in that busi-  
ness, 514.

effects of this rule shown, 514.

how far the principal is answerable for the fraud of the agent, 514.

one repeatedly employed to do certain things may be believed by  
other persons to have the authority of his employer, 514.

how an agency, or the act of an agent, may be confirmed by adop-  
tion and ratification, 514.

all mercantile agency is governed by mercantile usage, 515.

the distinction between factors and brokers, 515.

a cashier or other official person has all the authority necessary or  
usual in the transaction of his business, 516.

**AGENCY** — *Continued.*

- the extent and duration of an agent's authority, 516.
- an authority to sell implies an authority to sell on credit only where that be usual, 516.
- the same rule prevails as to authority to sell with warranty, 517.
- general authority to transact business does not authorize an agent to accept or indorse bills or notes, 517.
- if an agent make a false statement, believing it to be true, and the principal knows it to be false, and does not correct it, this is the fraud of the principal, 517.
- the death of the principal operates a revocation of authority, 517.
- qualifications of this rule, 517.
- revocation generally is always in the power of the principal, 517.
- not so, if he has given a power coupled with an interest, 517.
- what this means, 517.
- marriage of a woman revokes a power given by her when single, 517.
- a bank exercising due care in the choice of a notary or other agent is not liable for the want of care or skill of such agent, 518.
- the execution of authority by an agent, 518.
- the authority must be conformed to with strict accuracy in all matters of substance, 518.
- liability of an agent, how it may be caused, 519.
- an agent makes himself liable by exceeding his authority or departing from it, 519.
- a party with whom an agent deals cannot hold him personally, if he knew that the agent exceeded or departed from his authority, 519.
- the rights of action growing out of an agency, 519.
- where an agent intrusted with goods sells the same without authority, 519.
- an undisclosed principal may show that the nominal party was his agent, and then sue on the contract, 519.
- so an undisclosed principal, when discovered, may be sued on the contract, 519.
- how a principal is affected by certain acts of his agent, 520.
- a principal is liable, although personally innocent, if his agent makes a fraudulent representation in transacting business for him, 520.
- a principal cannot lessen or escape liability by calling himself an agent, 520.
- a principal can take no benefit from his agent's fraud, 520.
- payment to an agent of money due to a principal binds the principal only when made in the regular course of business, 520.
- and only when made to an agent who is authorized to receive the money, 520.
- a principal is not responsible for the criminal acts of his agents, unless he commanded them, 521.
- mutual rights and duties of principal and agent, 521.
- an agent who departs from his instructions is liable to his principal for the consequences, 521.

**AGENCY** — *Continued.*

usage has great influence in determining the effect of his instructions, but cannot prevail over express instructions, 521.

no attorney or agent can appoint a sub-attorney or sub-agent, unless authorized expressly, or by the reason and necessity of the case, 521.

an agent must use, in the affairs of his principal, the care and skill which a reasonable man would use in his own, 522.

an agent is bound to the utmost good faith, 522.

for a breach of duty an agent is responsible for the whole injury sustained by his principal, 522.

if an agent embezzles his employer's property, the employer may reclaim it wherever he can trace it, 522.

if the property of the principal be mixed indistinguishably with the agent's own goods, how the law applies to that case, 522.

an agent or trustee, to sell property, cannot buy it himself; nor, if employed to buy, can he buy of himself, 522.

agents must keep an exact account of their doings, 523.

what interest will be allowed on the balances due from an agent or trustee, 523.

the law as to the revocation of agency, by principal or agent, 523.

insanity revokes authority, 523.

factors and brokers, law of, 523.

commission-merchants, law of, 523.

effect of a guaranty by a commission-merchant, 523.

how far a factor who is intrusted with goods may pledge them, 524.

an agent or factor must obey all instructions; and wishes of his employer, sufficiently expressed, have the force of instructions, 524.

how far a factor or commission-merchant, who charges no guaranty commission, is liable to his principal, 524.

when a factor or broker can claim their commissions, 525.

the distinction between a foreign and a domestic factor, and the law as to each, 525.

forms of power of attorney and proxies, 526-531.

**AGRICULTURAL IMPLEMENTS**, manufactures of, 70.

**ALABAMA**, boundaries, extent, constitution, history, and condition of, 138.

the right of suffrage by the constitution of, 191.

abstract of the statute law of husband and wife, and of homestead, 212.

**ALASKA**, Territory of, boundaries, extent, history, and condition of, 162.

**ALTERATIONS** in a written instrument, effect of, 278.

**AMENDMENTS TO THE CONSTITUTION**, 1 to 15, 34-37.

provided for by the constitution, 96.

how made, 97.

when made hitherto, 98.

**APPRENTICES**, law concerning, 207-209.

duties of an apprentice, and of a master, 207.

one who seduces an apprentice from the service of his master is liable for damages, 208.

forms of indenture of apprenticeship, 209.

**APPROPRIATION OF PAYMENT, law of, 467.****ARBITRATION, law of, 551-556.**

of the submission or reference, 551.

it is essential to a valid award that it conforms to the terms of the submission, 551.

an award cannot affect strangers, or those who are not parties to the submission, 551.

an award must not embrace matters not included in the submission, 551.

an award will be construed liberally, 552.

an award must be distinct and certain, 552.

an award must require only what can be done, 552.

an award must be reasonable, 552.

an award must be final and conclusive, 553.

an award may be open to objection in a separable part without being void in the whole, 553.

if an award cover "all demands and questions," a party may still show that some particular demand was not considered or included, 553.

no especial form of an award necessary, 553.

any directions contained in the submission must be obeyed by the arbitrators, 553.

an award, not objectionable for any thing it contains, may still be set aside for irregularity in the conduct of the arbitrators, 554.

instances of irregularity which will avoid an award, 554.

an umpire, how he may be chosen, 554.

a submission (or reference) may be under a rule or order of court, 554.

a revocation of a submission by one of the parties; when and how it may be made, 554.

a submission under a rule of court cannot be revoked by either party without the consent of the other, 554.

a submission out of court can be revoked by either party at any time before an award, 555.

effect of such a revocation, 555.

when the death of a party causes a revocation, 555.

when bankruptcy or insolvency causes a revocation, 555.

after an award is fully made, neither party without the consent of the other, and neither one nor all the arbitrators, have any control over it, 555.

a submission, or reference, may be made by an exchange of bonds, 556.

forms of submission and of awards, 556, 557.

**ARBITRATORS. Same as referees. (See ARBITRATION.)**

**ARIZONA, Territory of, boundaries, extent, history, and condition of, 160.**

**ARKANSAS, boundaries, extent, constitution, history, and condition of, 142.**

the right of suffrage by the constitution of, 191.

abstract of the statute law of husband and wife, and of homestead, 212.

**ARTICLES OF CONFEDERATION**, a most imperfect instrument, from the jealousies of the States, and the division of opinions and interests, 13.

the nearest approach to a national government then possible, and an important step in that direction, which made the national constitution possible, 13.

defects of and objections to, 13.

**ATTAINDER**, bill of, prohibited by the constitution, 182.

what this bill is, 182.

reasons for this provision, 182.

**AWARD**, of referees or arbitrators. (*See* **ARBITRATION.**)

## B.

**BAIL**, excessive, prohibited by the constitution, 180.

**BALANCE OF POWER** between the States may be much effected by the admission of new States, 75.

**BANKRUPTCY**, law of, 605-625.

voluntary bankruptcy, 606.

assignments and assignees, 608.

of the debts of the bankrupt, 611.

the attendance and examination of bankrupts, 612.

the distribution of the bankrupt's estate, 613.

the bankrupt's discharge and its effects, 615.

preferences and fraudulent conveyances, effect of, 618.

involuntary bankruptcy, 619.

superseding the bankrupt proceedings by arrangement, 621.

**BED AND BOARD**, divorce from, 245.

**BILLS OF LADING** have a kind of negotiability, 481.

**BILLS OF EXCHANGE.** (*See* **NOTES OF HAND AND BILLS OF EXCHANGE.**)

**BONDS**, law of, 449, 450.

what a bond is, 449.

the essentials of a bond, 449.

meaning and effect of the usual provisions of a bond, 450.

forms of bond, 450-456.

**BOND OF MATRIMONY**, divorce from, 245.

**BOOTS AND SHOES**, manufactures of, 69.

## C.

**CALIFORNIA**, boundary, extent, constitution, history, and condition of, 148.

the right of suffrage as defined by the constitution of, 148.

abstract of the statute law of husband and wife, and of homestead, 212.

**CANALS**, how far Congress may construct them, 60-63.

**CARPETS**, manufacture of, 69.

**CARRIAGE OF GOODS AND PASSENGERS, law of, 558-575.**

distinction between private carrier and common carrier, 558.

private carrier, who is one, and what are his duties and his rights, 558.

common carrier, who is one, 559.

obligations and responsibilities of a common carrier, 559.

truckmen or draymen, expressmen, porters, stage-coaches, when and how far they are common carriers, 559.

railroad companies and steam packets, when they are common carriers, 560.

ordinary sailing vessels, when they are common carriers, 560.

boatmen on canals and rivers, and ferrymen, when they are common carriers, 560.

a common carrier may be a wharfinger, warehouseman, or a forwarding merchant; when he is to be considered in one character and when in the other, 561.

bills of lading, usage and law of, 561.

receipts in the nature of bills of lading, by expressmen and others, law of, 562.

obligation of a common carrier to receive and carry goods and passengers, 562.

obligations of a common carrier as to the passengers he carries, 563.

obligations of a common carrier as to the delivery of the goods he carries, 564.

difference between common carriers by land and those by water, as to the notice to be given of their arrival, 565.

when a third person claims goods by title adverse to consignor and consignee, 566.

the lien of the common carrier on the goods he carries for his compensation, 566.

the liability of the common carrier exceptional and peculiar, 567.

he is liable for any loss of or injury to the goods he carries, unless the same be caused by the act of God or of the public enemy, 567.

he is liable for loss by fire, unless it be caused by lightning, 567.

liable for loss caused by his negligence after fire, tempest, or inundation, 567.

liable for loss caused by theft, robbery, or violence of any kind, 567.

the general principles of agency apply to a common carrier, 566.

when a carrier is liable as carrier beyond his own route, 568.

when he is liable beyond his own route only as a forwarder and for his negligence, 568.

a carrier of passengers is under a less liability for them than for goods, 568.

no proof of care will excuse a carrier for loss of or injury to the goods he carries, 568.

but proof of all possible care on his part will excuse him for injury to passengers, 568.

**CARRIAGE OF GOODS AND PASSENGERS—***Continued.*

- a carrier may give a notice limiting his liability for loss or injury, 569.
- such notice must be reasonable in its extent, 569.
- it must be brought home to the knowledge of the sender or the passenger in such wise that his assent may be inferred, 569.
- putting such notice on a receipt for goods or on a ticket for a passenger, is not always enough, 569.
- any fraud of the sender or passenger upon the carrier extinguishes his liability, 570.
- a carrier cannot make a valid bargain to protect himself against a liability for his own misconduct, 570.
- of the liability of the carrier for goods carried by passengers, 570.
- liable only for what may be fairly considered as a passenger's baggage, 570.
- whether and how far he is liable for money, jewels, watches, arms, or tools, carried in a trunk, 571.
- not liable for a trunk containing goods carried as merchandise, 571.
- the fare paid by the passenger pays for carrying his baggage, 572.
- a carrier is liable only for baggage delivered to him or his servants, and placed under his or their care, 572.
- a traveller and his wife may give testimony as to their baggage and its value, 572.
- when a carrier is liable for the wilful wrong-doing of his servants, 573.
- when a party injured is in fault, the carrier may still be liable, 573.
- when a carrier is liable for injury to passengers carried gratuitously, 573.
- when a railroad company is liable for fire set to buildings along the road, 573.
- forms of receipts or bills of lading by steam-packet companies, 573.
- forms of receipts by express companies, 574, 575.

**CASHIER OF A BANK**, his rights, duties, and responsibilities, 515.

**CENSUS**, the constitution required an enumeration of the people to be made within three years after the first meeting of Congress, 98.

census a Roman institution, and a Roman or Latin word, 98.

in Rome, the only purpose of a census was to classify the people for political purposes, 98.

that the main purpose in this country; but now the census is made the means of acquiring a vast variety of most important information, 99.

annexed to the section concerning the census are tables enabling the reader to compare this country with other countries in Europe, Asia, and Australia, in regard to the extent and density of population, railroads, telegraphs, the mercantile navies of the world, and the debts and revenues of the various nations, 101-106.



CHECKS. (*See* NOTES OF HAND AND BILLS OF EXCHANGE.)

COBB, GENERAL, anecdote of, 20.

CODICILS, what they are, and law of, 258.

COINS, the money of the world, 85.

COLLATERAL PROMISE, how it differs from an original promise, 463.

COLONIES OF NORTH AMERICA, from their beginning exercised self-government, 8.

COLORADO, Territory of, boundaries, extent, history, and condition of, 159.

COLUMBIA, District of, 163.

COMMERCE, power to regulate among the States, 58.

distinction between power to regulate and power to create, 58.

power of Congress over new instruments of internal domestic commerce, 59.

COMMISSION-MERCHANTS, law of, 523.

of a guaranty by commission-merchants, 523. (*See* AGENCY.)

COMMON CARRIER. (*See* CARRIAGE OF GOODS AND PASSENGERS.)

COMPARISON of the present condition of this country with what it was when the constitution was formed, 165.

CONDONATION, in the law of divorce, meaning of, and effect of, 246.

CONFEDERATION, Articles of, adopted by the Continental Congress in 1777, and ratified by the States in 1778, 1789, and 1781, 12.

CONGRESS, from nine States, in 1765, 10.

Continental, in Philadelphia, in 1774; in 1775 appointed Washington commander-in-chief of the continental army, and on the 4th of July, 1776, declared our independence, 11.

appointed a committee to prepare a form of confederation for the colonies, 11.

resolution for a convention of delegates to revise the Articles of Confederation, 21.

of the United States, first meeting of, 24.

has the power of admitting new States, 94.

precautions concerning their admission, 95.

a republican form of government guaranteed, 95.

this guaranty means that all the States guarantee to each State that every State in the Union shall have a republican form of government, 95.

by the admission of new States, how the balance of power between the States is affected, 95.

CONNECTICUT, convention of, adopted the Constitution of the United States, by a large majority, 23.

boundaries, extent, constitution, history, and condition of, 111.

the right of suffrage by the constitution of, 192.

abstract of the statute law of husband and wife and of homestead, 214.

CONSIDERATION of negotiable paper, 493.

CONSTITUTION, what a constitution is, 3.

imitations of a constitution in Europe and South America, 3.

**CONSTITUTION — Continued.**

a supreme law which the nation itself makes to control its political servants, as the law of the land, 3.

the British, how it differs from our own, 4.

**CONSTITUTION OF THE UNITED STATES, 25-33.**

amendments of, 1-15, 34-37.

history of, 5.

events before the War of Independence, 5.

events from the beginning of the War of Independence to the formation of the constitution, 10.

early efforts of the far-sighted and patriotic to promote union, 10.

what its purpose was, 15.

formation of, commissioners from five States met in 1786, 16.

agreed to, in convention, on the 17th of September, 1787, 21.

comments upon, 38.

what this constitution is, 38.

it is a compact, and more than a compact, and both a social and a federal compact, 38.

the principle which underlies the same, 40.

gives to the national government all the strength it needs or could use, as a central national government, reserving to each State its due powers, 43.

great danger of, by the abuse of power by a majority, and how this is provided against by the constitution, 43.

reconciliation of State rights and national sovereignty, 44.

the distribution of power in, 47.

the executive power, 48.

the legislative power, 51.

why this power is vested in two bodies, 51.

of the senate, 53.

how senators are chosen, 54.

their term of six years was a compromise between extreme views, 54.

the senate holds an important check over the President in matters of appointment and of treaties, 55.

the house of representatives, 55.

how they are chosen, 55.

how they are apportioned among the States, 56.

privileges of senators and representatives, 56.

freedom of arrest, and the reason of this privilege, 56.

not to be questioned elsewhere for speech in either house, and the reason for this privilege, 57.

power to regulate commerce with foreign nations, 57.

power to regulate commerce among the States, 58.

how far the power to regulate gives the power to create commerce, 58.

railroads, their extent, and the constitutional questions to which they give rise, 59.

the distinction between the legislative, the executive, and the judicial functions; reasons for and wisdom of, and history of in practice, 71.

CONSTITUTIONS OF THE SEVERAL STATES, 107-156.

CONVENTION, for forming a constitution of the Union in 1787, 21.

letter from the president of, to Congress, accompanying the constitution, 22.

CORPORATION, how the deed of, should be made, 274.

COTTON GOODS, manufactures of, in the United States, 68.

CRUEL AND UNUSUAL PUNISHMENT, prohibited by the constitution, 181.

reason for this provision, 181.

CRUELTY, a ground of divorce, 246.

CUTLERY GOODS, manufactures of, in the United States, 69.

## D.

DAKOTA, Territory of, boundaries, extent, history, and condition of, 159.

DAMAGES, what a grantee with warranty may recover when he loses his land by a defect of title, 280.

DATE, a deed having none, takes effect from delivery, 273.

DEBASEMENT OF THE COIN. (*See MONEY.*)

DEED BY INDENTURE, what it is, 283.

DEED-POLL, what it is, 283.

DEEDS CONVEYING LAND, law of, 273-287.

what is essential to such deeds, 273.

in this country lands can be transferred only by a deed which is signed, sealed, acknowledged, and delivered, 273.

deeds should always be recorded, 273.

what the word "deed" means in law, 273.

grantor should write his name with ink, 273.

if he cannot write his name, he may make his mark, 273.

not safe to trust to signature in pencil, 274.

the name of the grantee should be written in the proper place, in ink, 274.

sometimes written in pencil, to be erased, and a new name inserted; but this an unsafe practice, 274.

how the deed of a corporation should be executed, 274.

safest way to adhere to established forms and phrases in drawing and executing instruments, 274.

what a seal is in different States, 274.

delivery of the deed is essential, 275.

delivery as an *escrow*, what this delivery is, 275.

where the grantor puts the deed in the hands of a third person, to be given to the grantee after the death of the grantor, 275.

a deed to a married woman may be delivered to her or to her husband, 275.

when delivered to the grantee, there must be assent and acceptance on his part, 275.

deeds should be attested by witnesses, who should see the grantor sign, 276.

**DEEDS CONVEYING LAND — Continued.**

what the witnesses must remember when called on to testify, 276.

witness may be a minor, 276.

witness should have no interest in the deed, 276.

a deed may be valid between the parties, although not acknowledged;

but cannot generally be recorded without acknowledgment, 276.

what an acknowledgment is, and how it may be made, and what is its effect, 276.

whether all the grantors should acknowledge the deed, 277.

how one who executes the deed for another should acknowledge the deed, 277.

a deed should be dated; but if it have no date, it will take effect from delivery, 277.

the necessity and effect of recording, 277.

the usual clauses in deeds, 278-283.

it is customary to recite in deeds the consideration under which they are made, 278.

this is usually the price paid for them, but may be love and affection, or any other cause, 278.

it is customary but not necessary to put in one dollar, or some other nominal sum, 278.

the seller is not bound by his receipt for the money contained in the deed, 278.

he may still sue for the money, but cannot say the deed is void for non-payment, 279.

usual words of a conveyance, 279.

the description of the land should be minute and accurate, 279.

a conveyance to the grantee without words of inheritance gives the land to him for his life only, 279.

what the words of inheritance are, 279.

deeds end by the clause of execution; what it is, 279.

what a quitclaim deed is, and what it effects, 279.

what a warranty deed is, and what it effects, 279.

what clauses make a deed to be a warranty deed, 280.

these clauses usually contain four different agreements, warranties, or covenants, 280.

nicety of the law as to their exact meaning and operation, 280.

what damage a grantee recovers who is obliged to fall back on his warranty; different rules in different States, 280.

how incumbrances on the estate may be inserted, 280.

the covenants of the warranty pass to the grantee, 281.

sometimes an estate is conveyed on a condition; but this is a very catching thing, 281.

possible effect of the word "condition" in any deed but a mortgage, 281.

if a married woman holds land, husband and wife, joining in one deed, may convey it, 282.

in some of our States she may do this by her own deed, 282.

how a married woman may release her right of dower or of homestead, 282.

**DEEDS CONVEYING LAND** — *Continued.*

a bargain for land or real property, if not written, has no force, 282.  
 a deed conveying land may be either a deed-poll or an indenture, 282.  
 deeds conveying land are of a vast variety, and hence a great variety of forms are given, 282.

mortgages of land, 284.

the purpose of a mortgage is to give to a creditor the security of property, 284.

a mortgage is usually a deed conveying the land to a creditor as fully as if it were sold to him outright; but with a condition inserted, that if the grantor shall pay to the grantee a certain sum of money at a certain time, the deed shall be void, 284.

how this condition is usually expressed, 284.

mortgages are sometimes made to secure a promissory note, and sometimes a bond, 284.

the promise, condition, or agreement, which converts a conveyance of land into a mortgage, usually is, and always should be, contained in the deed itself, 284.

but the instrument of defeasance may be a separate instrument, 284.  
 objections to this, and questions which have arisen in relation to it, 285.

whether courts can relieve the grantor when the condition or defeasance was not written in any way, 285.

great diversity of the decisions on this point; the rule prevailing in the Supreme Court of the United States given, 285.

the mortgagor has strictly no right to retain possession of the land, unless this is provided for in the mortgage, 286.

a mortgagor has a right to redeem, or an equity of redemption; what this right is, 286.

a mortgagor may give to the mortgagee a power of sale, which defeats or qualifies the right to redeem, 286.

what this power of sale is, and what its effect is, 286.

the time limited for the redemption begins from the day when the mortgagee takes possession of the land for the purpose of *foreclosing* the mortgage, 287.

in what manner the mortgagee may enter to foreclose, 287.

what a mortgagor must do to redeem his mortgage, 287.

a common agreement is, that the mortgagor shall keep the premises insured; this agreement should be inserted in full in the deed, 287.

if a mortgagor erects buildings on the mortgaged land, the effect of it, 287.

if the mortgagee puts buildings on the land, the effect of it, 287.

forms of deeds of conveyance, 288-356.

**DELAWARE**, convention of, adopted the constitution at once, unanimously, 23.

boundaries, extent, constitution, history, and condition of, 117.

the right of suffrage by the constitution of, 192.

abstract of the statute law of husband and wife, and of homestead, 215.

**DISHONOR OF NEGOTIABLE PAPER**, what it is, and effect of, 494.

**DISSOLUTION OF PARTNERSHIP**, law concerning, 534.

**DISTRIBUTION OF THE PROPERTY OF AN INTESTATE**, determined in the several States by the statutes of descent or of inheritance, 253.

the difference between the law of this country on this subject and the law of England, 253.

provisions as to the inheritance of the real property of an intestate, 253, 254.

distribution of the personal property of an intestate, 254.

how far similar to that of real estate, 254.

**DISTRICT OF COLUMBIA**, boundaries, extent, history, and condition of, 163.

**DIVORCE**, law of, 245.

of two kinds: divorce from the bond of matrimony, and from board and bed, 245.

from the bond of matrimony annuls the marriage altogether, 245.

whether the guilty party may marry again, 245.

powers of the court as to terms of separation, 245.

a divorce from board and bed separates the parties, but leaves them still married, 245.

the law of, in England, 245.

history of the law of, in this country, 245.

what desertion or abandonment is a ground of divorce, 246.

cruelty a ground of divorce, 246.

condonation, meaning of and effect of, 246.

**DOMESTIC RELATIONS**, rights and duties growing out of, 201.

parent and child, the law of, 201.

father's liability for minor child, 201.

infants or minors, law concerning, 202.

infants, who are, in law, 202.

on what day persons become of age, 202.

contract of an infant, if not for necessities, voidable, 202.

infant may ratify and confirm it, and how, 202.

if an infant buys property, an act of ownership after majority confirms the purchase, 203.

continued possession of the property has the same effect, 203.

infants' contracts for necessities not voidable, 203.

what are necessities for an infant, 202, 203, 204.

a note given by an infant, when voidable, 204.

an infant is liable for torts, or wrongs or offences, 204.

so if he fraudulently represented himself as of age, 204.

an infant's contract is voidable only by himself, 205.

form of an infant's new promise or confirmation, 205.

**DOMESTIC MANUFACTURES**, increase of, 70.

**DOMICILE**. (*See* LAW OF PLACE.)

**DORMANT PARTNER**, who is, 533.

**DRAFTS**. (*See* NOTES OF HAND AND BILLS OF EXCHANGE.)

**DRAWER AND DRAWEE**, of a bill of exchange. (*See* NOTES OF HAND AND BILLS OF EXCHANGE.)

## E.

- EMINENT DOMAIN**, law of. It is the right of the sovereign to take private property for public purposes, 251.  
 the sovereign can take private property for public purposes only from public necessity, and by making full compensation, 251.  
 limits to the right of compensation, 252.  
 the most common exercise of eminent domain, 252.
- ERASURES**, in a written instrument, effect of, 278.
- ESCROW**, what it is, and law of, 375.
- EXCESSIVE BAIL**, prohibited by the constitution, 180.  
 reason for this provision, 180.
- EXCESSIVE FINES**, prohibited by the constitution, 181.  
 reasons for this provision, 181.
- EXCISE**, what it is, 64.
- EXECUTION**, clause of, in a deed, how it should be made, 279.
- EXECUTOR OR ADMINISTRATOR**, when he is liable on a promise to pay out of his own estate a debt of the deceased, 462.
- EXECUTORS AND ADMINISTRATORS**, the law respecting, and who are, 265-273.  
 a testator may generally direct that his executors or trustees should not give bonds, 266.  
 act as the personal representatives of the deceased, 266.  
 judge of probate, sometimes called surrogate, ordinary, register or registrar of wills, judge of the Orphan's Court, &c., 266.  
 an appeal may be taken from his decree to the Supreme Court, 266.  
 how an executor or administrator indorses negotiable paper of the deceased, 266.  
 how they submit a disputed question to arbitration, 266.  
 when they can execute the contract of the deceased as the deceased could have done himself, 266.  
 that the entire right of representation survives to the others on the death of one of several executors, 267.  
 duties of an executor arranged according to law, 267.  
 when an executor or administrator finds an estate to be insolvent, what he should do, 267.  
 forms for executors and administrators, 268-273.
- EXEMPTION LAWS**, 649.
- EXPRESSMEN**. (*See* CARRIAGE OF GOODS AND PASSENGERS.)
- EX POST FACTO LAW**, prohibited by the constitution, 182.  
 meaning of this phrase, 183.  
 reasons for this provision, 183.

## F.

- FERRYMAN**. (*See* CARRIAGE OF GOODS AND PASSENGERS.)
- FINES**, excessive, prohibited by the constitution, 181.
- FIRE INSURANCE**. (*See* INSURANCE AGAINST FIRE.)

**FLORIDA**, boundaries, extent, constitution, history, and condition of, 144.

the right of suffrage by the constitution of, 192.

abstract of the statute law of husband and wife, and of homestead, 215.

**FOREIGN AND INLAND BILLS OF EXCHANGE**, distinction between them, 490.

the different States of the Union are, in mercantile law, foreign countries as to each other, 490.

**FOREIGN ATTACHMENT**, 648.

**FRANKLIN'S MOTTO**: "Join or die," 10.

**FREEDOM OF SPEECH AND OF WRITING**, right to, secured by the constitution, 185.

reasons for this provision, and effect of, 185.

every man speaks and publishes on his own responsibility, 185.

the law of libel, 186.

the law of slander, 186.

when and how far the truth of the words spoken or published is a defence, 187.

## G.

**GARNISHEE PROCESS**, 648.

**GEORGIA**, convention of, adopted the constitution of the United States at once, unanimously, 23.

boundaries, extent, constitution, history, and condition of, 124.

the right of suffrage by the constitution of, 192.

abstract of the statute law of husband and wife, and of homestead, 215.

**GLOSSARY OF LAW TERMS IN COMMON USE**, 676-697.

**GROWTH OF THIS COUNTRY**, and the dangers which await us, 165.

**GUARANTY**, law of, 457-462.

who is a guarantor, 457.

no special form of words necessary to create a guaranty, 457.

a guaranty of a debt may be enforced, although the original debt cannot be, 457.

contract of, is construed strictly, 457.

what a guarantor who pays the debt of his principal may demand, 457.

when there must be a consideration for a guaranty, 457.

what the consideration may be, 458.

when the acceptance of a guaranty is necessary, 458.

how a guarantor is affected by a change in the liability of the principal, 458.

surety and guarantor often used as if they meant the same thing; how they differ, 458.

effect on the guarantor of the extension by law of the obligation for which he is liable, 459.

when a guaranty is revocable, 459.



**GUARANTY** — *Continued.*

what indulgence a creditor may give his debtor without discharging his guarantor, 459.

when a surety requests a creditor to proceed against a principal debtor, 459.

when a creditor gives time to his debtor, how this affects the guarantor, 459.

when a guarantor becomes liable, what notice he shall have, 459.

where a guaranty purports to be official, who is liable, 460.

a guarantor is discharged by any fraud practised upon him, 460.

forms of guaranty, 460-462.

**GUARDIAN AND WARD**, the law concerning, 205, 207.

**H.**

**HABEAS CORPUS**, the writ of, secured by the constitution, 171.

the legal meaning and effect of this writ, 172.

if this writ be properly executed, it makes illegal imprisonment impossible, 172.

illustrated by reference to France and England, 172.

what is illegal imprisonment, 172.

provisions of the laws of Congress and of the States to carry into effect the writ of *habeas corpus*, 173, 174.

method of obtaining this writ, 174.

what the writ is now commonly used for, 174.

form of a writ of *habeas corpus*, 175.

**HOLDER OF NEGOTIABLE PAPER**, his rights and duties, 494.

**HOMESTEAD**, provisions respecting, by the statutes of the several States, 212-234.

**HONOR**, acceptance or payment for, 508.

**HUMPHRIES**, Colonel, letter to Washington in 1797, and Washington's reply, 20.

**HUSBAND AND WIFE**, rights and powers of, at common law, 210.

an abstract of the law of husband and wife, and of homesteads, by the statutes of the several States, 212-234.

**I.**

**IDAHO**, Territory of, boundaries, extent, history, and condition of, 160.

**ILLINOIS**, boundaries, extent, constitution, history, and condition of, 137.

the right of suffrage by the constitution of, 192.

abstract of the statute law of husband and wife, and of homestead, 216.

**IMPAIRING THE OBLIGATION OF CONTRACTS**, prohibited by the constitution, 184.

reasons for this provision, 184.

instances of the application of this provision, 185.

- IMPEACHMENT**, House of Representatives alone has the power of impeachment; principles and rules which regulate the same, 76.  
Senate alone tries cases of impeachment; reasons why, 76.  
Chief Justice of the Supreme Court presides, 76.  
how the trial is conducted, 76.  
the punishment which follows conviction, 76.  
the convicted party may be tried afterwards for his crimes, 77.  
who may be impeached, 77.  
for what offences an officer may be impeached, 78.
- INDENTURE**, what it is, 283.
- INDEPENDENCE**, declared by Congress 4th of July, 1776, 11.
- INDIANA**, boundaries, extent, constitution, history, and condition of, 135.  
the right of suffrage by the constitution of, 192.  
abstract of the statute law of husband and wife, and of homestead, 217.
- INDIAN TERRITORY**, boundaries, extent, history, and condition of, 163.
- INDORSEMENT**, what it is in law, 482. (*See chapter on NOTES OF HAND AND BILLS OF EXCHANGE.*)  
who has the power of indorsement, 483.  
in blank and in full, 486.  
general authority to transact business does not include the power of, 517.  
a special authority to indorse is construed strictly, 517.  
the rights and duties of the indorser, 504.
- INFANT**, or minor, the law concerning, 201-205.
- INHERITANCE**, law of, 253.
- INSOLVENT ESTATE** of a deceased, duty of executors and administrators, 267.
- INSURANCE AGAINST ACCIDENT**, law of, 605.
- INSURANCE AGAINST DISEASE**, law of, 605.
- INSURANCE AGAINST DISHONESTY OF SERVANTS**, law of, 605.
- INSURANCE AGAINST FIRE**, law of, 576-597.  
the most frequent applications of this insurance, 576.  
in this country always effected by companies, 576.  
stock companies, what they are, 576.  
mutual companies, what they are, 576.  
mutual companies, on what terms insurance is made by them, 576.  
where mutual companies have a lien on the property insured, as security for the premium note, 577.  
when and how far usage may be resorted to to answer questions arising under fire policies, 577.  
when proposals made and accepted constitute a contract of insurance, 578.  
construction of policies of insurance against fire, 578.  
construction governed by the intention of parties as expressed, 578.  
instances of construction as to profits, stock in trade, wearing apparel, &c., 579.  
when the designation of the insured is common to many persons, 579.

**INSURANCE AGAINST FIRE — *Continued.***

of the assignment of the policy, 579.

in mutual companies the insured becomes a member, effect of this, 579.

application for insurance, law and rules concerning, 580.

when statements in applications are conditions precedent, 580.

when what is written to fill blanks differs from the printed matter, 580.

where a scale of premiums is calculated upon different classes of buildings or other property arranged according to supposed liability to fire, 580.

where an applicant puts the property for which insurance is requested into a less dangerous class, 581.

effect of the rule that the expression of one thing excludes what is not expressed, 581.

alterations by the insured of the property under insurance, law of, 582.

the insured should ask the insurer's consent to proposed alterations, 583.

when he may make them although consent is refused, 583.

insured may make reasonable repairs without asking or having leave, 583.

the insured must have a legal interest in the property insured, 584.

a partner has an insurable interest in partnership property, 584.

a mortgagor and a mortgagee may both insure the same property, each calling it his own, 584.

one who holds property in right of his wife may insure it, 584.

a trustee or agent may insure property in his hands, 585.

a consignee generally is not bound to insure the consignor's property, but may do so, 585.

a commission-merchant may cover in one policy, in his own name, all the goods of the owners who have consigned them to him, 585.

the insurers must know whom they insure; reason and effect of this rule, 585.

one effecting insurance on the property of another must have his authority for doing so, 586.

double insurance, what it is, and law concerning, 586.

fire policies usually contain exact provisions in relation to, 586.

warranty and representation, difference between them, and law concerning, 587.

when a warranty is of the present time and affirmatory, 587.

when a warranty is of the future and promissory, 587.

when a warranty is a continuing warranty, 587.

a warranty is a part of the contract, and must be exactly complied with, 587.

a representation is not a part of the contract, but must be substantially complied with, 587.

a fraudulent representation avoids a policy, 588.

**INSURANCE AGAINST FIRE** — *Continued.*

- if a representation be false, and relate to a material fact, it is fraudulent, 588.
- test whether a representation be material, 588.
- a warranty broken innocently avoids a policy; not so a misrepresentation, 588.
- concealment is the converse of misrepresentation, and has the same effect, 588.
- it is the duty of one asking insurance to give the insurers full information as to all circumstances affecting the risk, 588.
- when the insurers have a lien on the property insured, all incumbrances on the title must be fully disclosed, 589.
- if personal property is insured and described as in a certain place, when it is removed therefrom the insurance ceases, 589.
- the risk incurred by insurers against fire does not include loss or injury by heat without fire, 589.
- insurers liable for injury by water used to extinguish fire, 590.
- or for injury caused by removal from immediate danger of fire, 590.
- not liable for injury caused by lightning, unless there be ignition, 590.
- loss by explosion of gunpowder is a loss by fire, 590.
- loss by explosion caused by steam not a loss by fire, 590.
- insurers liable for loss caused by negligence of insured or his servants, 590.
- valuation, law and rules concerning, 590.
- how far a valuation is conclusive upon both parties, 591.
- if building is injured but not destroyed, insurers may repair, or pay what it would cost to repair, 591.
- alienation or transfer of policy or property, law of, 591.
- insured who alienes the property before a loss has no claim under the policy, 592.
- after a loss, insured may transfer his claim, 592.
- mortgage does not avoid the policy, 592.
- insured should be careful to have his transfer assented to by insurers, and duly indorsed and certified, 592.
- notice and proof of loss by fire, law and rules concerning, 592.
- adjustment of a loss by fire, 593.
- forms of notice to insurers of a loss by fire, 591, 595.
- form of assignment of a policy, 596.

**INTEREST AND USURY**, law of, 631-640.

- what interest is, and when and for what it is due and recoverable, 630.
- devices to which usurers resort to conceal usury, 633.
- a charge for risk or service, when not usurious, 634.
- the sale of notes, when not usurious, 635.
- of compound interest, when it is allowed, 637.
- abstract of the usury laws of the States, 637-640.

**INTERNAL IMPROVEMENTS**, what Congress can do about them, 63.

*IN TESTIMONIUM* CLAUSE, what it is, 279.

IRON, manufactures of, in the United States, 68.

ISSUE, in the law of inheritance, meaning of, 253.

## J.

JAY, John, letters to Washington, in 1786, 17.

Washington's reply to, 18.

Washington's letter to, 18.

JUDGE-MADE LAW, so called, principles regulating, 72, 73.

JUDICIARY, the, as established by the constitution, 71.

their power and duty of as to a law not made in pursuance of the constitution, 73.

reasons for depositing this power in the hands of the judiciary, 74.

made by the constitution independent, and for what reasons, 75.

desirable amendments of the constitution, in respect to, 75.

JURY. (*See* TRIAL BY JURY.)

## K.

KANSAS, boundaries, extent, constitution, history, and condition of, 153.

the right of suffrage by the constitution of, 193.

abstract of the statute law of husband and wife, and homestead, 219.

KENTUCKY, boundaries, extent, constitution, history, and condition of, 128.

the right of suffrage by the constitution of, 193.

abstract of the statute law of husband and wife, and of homestead, 219.

## L.

LAW OF PLACE, 640-645.

what is meant by the law of place, 640.

our States are foreign to each other in the law of place, 640.

general rules and principles of the law of place, 641.

a contract valid where it is made is valid everywhere, 641.

distinction between contracts about movables and those about immovables, 641.

what is the place of a contract, 642.

when a note may be made to bear the interest of either of two places, 642.

domicile, what it is, how it is acquired, and how it may be changed, 643.

the legal effects of a change of domicile, 644.

LEGISLATIVE BODIES, each house is a judge of the elections and qualifications of its own members, 55.

LEGISLATIVE POWERS, as established by the constitution, 51.

LETTERS OF MARQUE, what they are and how issued, 78.

LIBEL, the law of, 186.

**LICENSE**, what it is, 64.

**LIENS OF MECHANICS AND MATERIAL-MEN**, for their wages and materials, 649-653.

who are material-men, and their rights, 650.

what notice must be given of a lien by mechanics, 650.

forms of notices and releases under the law of mechanics' liens, 651-653.

**LIFE INSURANCE**, law of, 597-604.

how life insurance is usually effected in this country, 597.

the premium paid partly in notes, rules of, 598.

time of the death sometimes very important, how determined, 599.

restrictions and exceptions in life policies, 599.

of certain dangerous trades or occupations, 599.

when suicide avoids the policy, 600.

when one is supposed to be dead because not heard of for a long time, 600.

what interest one insured in a life policy must have, 600.

of the assignment of a life policy, what it is and how it should be made, 600.

of warranty, representation, and concealment in life insurance, 602.

of warranty against disease, 603.

of warranty of sober and temperate habits, 603.

**LIMITATIONS**, statute of. (*See* STATUTE OF LIMITATIONS.)

**LIMITED PARTNERSHIP**, law of, 545. (*See* PARTNERSHIP.)

**LINCOLN**, General, suppressed a rebellion in Massachusetts, 19.

**LOUISIANA**, Territory of, purchased in 1800, 134.

boundaries, extent, constitution, history, and condition of, 134.

the right of suffrage by the constitution of, 193.

abstract of the statute law of husband and wife and of homestead, 220.

## M.

**MAINE**, boundaries, extent, constitution, history, and condition of, 139.

the right of suffrage by the constitution of, 193.

abstract of the statute law of husband and wife, and of homestead, 221.

**MALT LIQUORS**, breweries established in the United States, 70.

**MANUFACTURES**, statement of the principal manufactures of the country, 68-70.

**MARBURY'S CASE** referred to, 72.

**MARRIAGE**, the law of, 235-242.

what constitutes a legal marriage, 235.

some uncertainty respecting the law, 235.

what provisions of the law may be disregarded without avoiding the marriage, 236.

consent is of the essence of this contract, 236.

the wife may be always the agent of the husband, 236.

how far she is considered so by law, 236.

**MARRIAGE** — *Continued.*

- the husband responsible for necessities supplied to his wife, 236.
- unless she deserts him, 236.
- her rights if she leaves him because he treats her ill, 236.
- liabilities of a man who lives with a woman who is not his wife, 237.
- method of securing her rights and property to a woman about to be married, 237.
- forms of an indenture, to put in trust the property of an unmarried woman, 237.
- a contract made upon consideration of marriage should be written and signed, 462.

**MARSHALL**, Chief Justice, decision of, as to judicial duty, 72.

**MARYLAND**, convention of, adopted the constitution of the United States by a large majority, 23.

- boundaries, extent, constitution, history, and condition of, 118.
- the right of suffrage by the constitution of, 193.
- abstract of the statute law of husband and wife, and of homestead, 222.

**MASSACHUSETTS**, insurrection in, 19.

- boundaries, extent, constitution, history, and condition of, 108.
- the right of suffrage by the constitution of, 194.
- abstract of the statute law of husband and wife, and of homestead, 223.

**MICHIGAN**, boundaries, extent, constitution, history, and condition of, 143.

- the right of suffrage by the constitution of, 194.
- abstract of the statute law of husband and wife, and of homestead, 224.

**MILITARY ACADEMY**, 80.

**MILITARY RIGHTS AND DUTIES**, powers of Congress concerning, as given by the constitution, 188.

- power of organizing, arming, and disciplining the militia given to Congress, 189.
- what constitutes the militia, 189.
- the right of the people to keep and bear arms is not to be infringed, 189.

**MINNESOTA**, boundaries, extent, constitution, history, and condition of, 151.

- the right of suffrage by the constitution of, 194.
- abstract of the statute law of husband and wife, and of homestead, 225.

**MINORS**, may bequeath personal property, and when, 255.

**MISSISSIPPI**, boundaries, extent, constitution, history, and condition of, 136.

- the right of suffrage by the constitution of, 194.
- abstract of the statute law of husband and wife, and of homestead, 225.

**MISSOURI**, boundaries, extent, constitution, history, and condition of, 141.

- the right of suffrage by the constitution of, 194.

**MISSOURI—***Continued.*

abstract of the statute law of husband and wife, and of homestead, 226.

**MISTAKE**, important distinction between a mistake of law and a mistake of fact, 632.

**MONEY**, power to coin money belongs to Congress, 85.

coins, the money of the world, 85.

before the invention of paper money, governments in difficulties debased the coin; now they issue paper money for the same purpose, and with a similar effect, 85.

exigencies of the late war compelled the repeal of the law making money the only legal tender, 85.

this could be justified only on the ground of necessity, 86.

a most interesting question, when we can be done with paper money as a legal tender, 87.

**MONTANA**, Territory of, boundaries, extent, history, and condition of, 161.

**MORMONS**, history and present location and condition of, 157.

**MORTGAGES OF LAND.** (*See* DEEDS OF CONVEYANCE.)

**MUTUAL INSURANCE COMPANIES.** (*See* INSURANCE AGAINST FIRE.)

## N.

**NATIONAL SOVEREIGNTY**, reconciled with State rights, 44-47.

**NATURALIZATION**, Congress has power over, 87.

effect of, 88.

laws of, 88.

process of, 90.

forms of, 91-94.

**NAVAL ACADEMY**, 80.

**NEBRASKA**, boundaries, extent, constitution, history, and condition of, 156.

the right of suffrage by the constitution of, 194.

abstract of the statute law of husband and wife, and of homestead, 226.

**NEVADA**, boundaries, extent, constitution, history, and condition of, 155.

the right of suffrage by the constitution of, 194.

abstract of the statute law of husband and wife, and of homestead, 226.

**NEW ENGLAND**, suffering and discontents in, after the War of Independence, 19.

**NEW HAMPSHIRE**, boundaries, extent, constitution, history, and condition of, 107.

the right of suffrage by the constitution of, 195.

abstract of the statute law of husband and wife, and of homestead, 227.

**NEW JERSEY**, convention of, adopted the constitution of the United States at once, unanimously, 23.



**NEW JERSEY — Continued.**

boundaries, extent, constitution, history, and condition of, 114.  
the right of suffrage by the constitution of, 195.  
abstract of the statute law of husband and wife, and of homestead,  
227.

**NEW MEXICO, Territory of, boundaries, extent, history, and condition of, 156.**

**NEW YORK, legislature of, their order looking to a convention for a federal constitution, 21.**  
boundaries, extent, constitution, history, and condition of, 112.  
the right of suffrage by the constitution of, 195.  
abstract of the statute law of husband and wife, and of homestead,  
228.

**NORTH CAROLINA, boundaries, extent, constitution, history, and condition of, 122.**

the right of suffrage by the constitution of, 195.  
abstract of the statute law of husband and wife, and of homestead,  
229.

**NORTH-WEST TERRITORY, history of, 131.**

ordinance for the government of, 133.

**NOTES OF HAND AND BILLS OF EXCHANGE, DRAFTS, AND CHECKS, 481-512.**

negotiable paper, what it is, 481.  
bills of exchange, when they were invented, 481.  
bills and notes in commerce represent money, which represents the market value of every thing, 481.  
the rules of law on the subject of negotiable paper are very exact and technical, 481.  
a negotiable bill of exchange, what it is, 482.  
form of, 482.  
the drawer, who he is, 482.  
the drawee, who he is, 482.  
the payee, who he is, 482.  
acceptance of a bill, how it is made, 482.  
by acceptance, the drawee becomes the acceptor, 482.  
how the payee may transfer the paper by indorsement, 482.  
how an indorsee may transfer the bill, 482.  
common form of a promissory note, 482.  
“from date” should be written, but if omitted, the law supplies the omission, 482.  
difference between parties to a note and the parties to a bill of exchange, 483.  
the signer of a note is called the maker or promisor, and the payee is the promisee, 483.  
the payee of a negotiable note has the same power of indorsement as the payee of a bill of exchange, 483.  
the words “to order” or “to bearer” make a note or bill negotiable, 483.  
the maker of a note holds the same position as the acceptor of a bill, 483.

---

NOTES OF HAND AND BILLS OF EXCHANGE—*Continued.*

- the drawer of a bill holds the same position as the indorser of a note, 483.
- a holder of a note looks first to the maker and then to the indorser, 483.
- the holder of a bill looks first to the acceptor and then to the drawer, 483.
- neither indorsement nor acceptance nor making is complete until delivery and reception of the bill or note, 483.
- what is essential to a negotiable note or bill, 484.
- effect of the difference between a note that is negotiable and one that is not, on the trustee process or foreign attachment, 484.
- the promise of the note must be absolute and definite, and so must be the order of the bill, 484.
- if the time of payment is not written in a bill or note, it is payable on demand, 484.
- if any contingency appears on the face of the instrument, as to time or amount of payment, or payor or payee, it is not a negotiable note or bill, 484.
- a bill or note to be negotiable must be payable in money only, 484.
- if payable in current funds, or good bank-notes, the paper is not negotiable in some States, but in others it is, 484.
- a bill or note may be written on paper or upon any proper substitute, 485.
- it may be written in any language, in ink or pencil, 485.
- and the name may be signed or indorsed by a mark, 485.
- if not dated, it will be considered as dated when made, 485.
- the amount is usually written in figures at the corner or bottom, 485.
- if the sum written in words in the paper and the sum written at the corner in figures differ, the words prevail over the figures, 485.
- accidental omissions supplied by the law; instances given, 485.
- where persons sell an article, taking in payment a promissory note which contains a provision that the property or ownership of the thing sold shall remain in the seller until the note is paid, 485.
- form of such a note, 485.
- question whether such a note be negotiable, and effect of this question, 486.
- the payee must be distinctly designated, unless the bill or note is made payable to bearer, 486.
- a promissory note may be made payable to the promisor, or his order, 486.
- such a note is nothing until the promisor not only signs, but indorses, 486.
- a note indorsed in blank is transferable by delivery, 486.
- what indorsements in blank are, 486.
- what indorsements in full are, 486.
- any holder may write over any blank indorsement an order to pay it to himself, 486.

NOTES OF HAND AND BILLS OF EXCHANGE — *Continued.*

- a note to the promisor himself, and indorsed by him in blank, is much the same thing as a note to bearer, 487.
- use of such notes in our commercial cities, 487.
- where an indorsee is named, and the note gets into the possession of a wrong person of the same name, 487.
- where the name of a party is spelled wrong, 487.
- where both the father and the son have the name of the payee, 487.
- if the paper is neither payable to bearer, nor to the maker's or drawer's order, nor to any other person, it is incomplete and invalid, 487.
- where a note is payable to a fictitious payee, and indorsed with the same name by the maker, 487.
- if a blank be left for the payee's name, a *bona fide* owner may fill it with his own, 487.
- where the name of a payee is not the name of a person, but the name of a ship, 487.
- where a note is payable to different persons in the alternative, 487.
- a note payable to the order of any person is the same as if to him or his order, 487.
- where the instrument is ambiguous and irregular, so that it may be read as either a note or a bill, 487.
- bank-notes or bank-bills, what they are, 487.
- property in them passes by delivery, 487.
- if one who finds or steals them passes them for value to a *bona fide* holder, they are good in his hands against the original owner, 488.
- if a bank pays its bills in good faith, an owner who lost them has no claim, 488.
- bank-bills are passed by a will bequeathing money, 488.
- they are a good tender, unless objected to at the time as not money, 488.
- forged bills given in payment are nothing, 488.
- where bills of a bank which has failed are paid, the effect of such payment, 488.
- checks on banks, what they are, 488.
- they require no acceptance, 488.
- where a holder delays presenting a check until the bank fails, 488.
- when the drawer of a check has the right to require that it be presented for payment, 488.
- when the drawer of a check has no funds in the bank, 488.
- checks are often marked by the bank as good, the effect of this, 488.
- checks are often drawn payable to a payee or his order, the purpose and effect of this, 489.
- a check is not payment of a debt until it is cashed, 489.
- the death of a drawer countermands his check, 489.
- if the bank pay it before knowledge of the death of the drawer, they are discharged, 489.
- where a bank pays a forged check, whose loss it is, 489.

NOTES OF HAND AND BILLS OF EXCHANGE—*Continued.*

where a bank pays a check, of which the amount has been falsely increased, whose loss it is, 489.

accommodation paper is paper for which the acceptor or maker has received no consideration, but has lent his name and credit to accommodate the maker, drawer, payee, or holder, 489.

he is bound to all other parties, as if he had received a consideration, 489.

he is not bound to the party whom he accommodates, 489.

foreign and inland bills of exchange, in what way they differ, 490.

our States are foreign to each other in commercial law, 490.

foreign bills dishonored should be protested, 490.

inland bills and promissory notes are commonly protested, though this is not required by law, 490.

damages are to be recovered on protest, 490.

law of place gives rise to important questions in the case of foreign bills, 490.

if a foreign bill be indorsed where made, in a manner sufficient there, the indorsement will be held good here, 490.

a bill drawn in one place, but payable in another place, must be regulated as to protest and notice of dishonor by the law of the place where payable, 491.

if the legal interest where made differs from the legal interest where payable, the maker may make it payable with either interest, 491.

if the interest be not expressed, it will be that of the place where the note is payable, 491.

the law of the place of the contract construes it as a debt, but the law of the place where it is put in suit determines all questions as to remedy; instances of this, 491.

statutes of limitation of the place of the court trying the case are generally applied to it, 491.

but if the suit relates to land, the statute of limitations of the place where the land is situated is applied, 491.

a promisor may be arrested where the note is sued, if the law of that place permits, although he could not be where the note is made, 491.

the law of a foreign country is presumed to be the same with that where the suit is brought, unless proved otherwise, 490.

the consideration of negotiable paper is regulated by a peculiar law, 491.

only between two immediate parties can the defendant in a suit on negotiable paper rely on the want of consideration, 492.

an indorser sued by an indorsee on a note originally made in fraud, may require the holder to prove that he paid consideration, 492.

value received is usually and properly written, but is not necessary, 492.

what this phrase means in a note and in a bill, 492.

what may be a consideration for negotiable paper, 493.

what is not a sufficient consideration, 493.

NOTES OF HAND AND BILLS OF EXCHANGE—*Continued.*

the rights and duties of the maker, 493.

the maker of a note and the acceptor of a bill are bound to pay it at maturity, and continue bound until their liability is barred by the statutes of limitations, 493.

the peculiar characteristics of negotiable paper begin to operate when the paper has passed into the hands of third parties, 493.

the rights and duties of the holder of negotiable paper, 494.

if a bill is deposited with him for collection, he holds it as a trustee, and can use it only in conformity with the trust, that is, not for his own benefit, 494.

where negotiable paper is transferred after its dishonor, 494.

presentment for acceptance is the duty of the holder of a bill of exchange, 495.

this presentment should be made without delay, 495.

it should be made during business hours, 495.

what business hours are in this country, 495.

excuses for non-presentment, 496.

to whom and in what way a bill should be presented, 496.

presentment for demand of payment of negotiable paper is governed by strict rules, 496.

what these rules are, stated, 496.

when and how the demand should be made, 497.

bankruptcy of the payer is no excuse for non-demand, 497.

impossibility of presenting a bill or note for payment will excuse delay in demanding payment while the impossibility remains, 497.

the mistake of the holder is no excuse, 497.

negotiable paper, payable at a time certain, is entitled to grace, 498.

how the days of grace are computed, 498.

if a note is payable in one or more months, this means calendar months, whether shorter or longer, 498.

how the maturity of a note is computed, 498.

bills and notes on demand should be presented for payment within a reasonable time, 498.

the holder of a check should present it at once, 499.

demand of payment should be made at the residence or place of business of the payer, within the proper hours of business, 499.

a note payable at a particular place should be demanded at that place, 499.

if a payer has changed his residence he should be sought for with due diligence, 499.

where a bill or note is not presented for payment at the time, to the person, in the place, or in the way required by law, all parties but the acceptor or maker are discharged, 499.

of protest and notice, 500.

when protest is required by law, 500.

when, where, in what manner, and by whom protest should be made, 500.

NOTES OF HAND AND BILLS OF EXCHANGE — *Continued.*

- the seal and certificate of a notary public are evidence of the dishonor of a foreign bill, but not of an inland bill, 500.
- notice must be given even to one who has knowledge, 500.
- if a letter properly addressed be put into the Post-office, any miscarriage of the mail does not affect the party giving notice, 501.
- a notice may be sent by a private messenger, under certain conditions, 501.
- the notice should be sent either to the place of business or to the residence of the party notified, 501.
- it may be sent wherever a party directs such a notice to be sent, 501.
- each party receiving notice has a day, or until the next post, after the day on which he receives it, to send the notice forward, 501.
- Sundays and legal holidays are not computed in reckoning the time in which notice must be given, 502.
- notice should be given only to a party to an instrument who is liable to pay it, 502.
- it must be given to every antecedent party who is to be held, 502.
- it may be given personally to a party, 503.
- how to be given when the party to be notified is dead, 503.
- one transferring by delivery without indorsement paper payable to bearer is not entitled to notice of non-payment, 503.
- a guarantor is entitled only to such notice as shall protect him from injury caused by want of notice, 503.
- the right to notice may be waived by any agreement to that effect, 503.
- different forms of waiver, notice, demand, and protest, and their effect, 503.
- how the want of notice may be cured afterwards, 504.
- the rights and duties of the indorser, 504.
- who are meant in the law-merchant by indorsers, 504.
- the payee of negotiable paper may indorse it, and afterwards any number of persons may indorse it, 504.
- what an indorser does by his indorsement, 504.
- an indorsement may be in blank or in full, 505.
- what these are, and the effect of each, 505.
- of special indorsement, how made, and its effect, 505.
- negotiable paper, transferable by delivery, is the property of whoever receives it in good faith, 505.
- what other instruments this rule has been extended to, 505.
- hence, if such an instrument passes for value to an innocent holder, this holder acquires a legal right to it, 505.
- the transfer by indorsement may be written on the face of the instrument, 506.
- joint payees who are not partners must join in an indorsement, 506.
- an indorser prevents his own responsibility by writing "without recourse" over his name, 506.
- every indorsement and acceptance admit conclusively the genuineness of the signature of every previous party, 506.

NOTES OF HAND AND BILLS OF EXCHANGE — *Continued.*

a holder may bring his action against any prior indorser, how to do this, 506.

where a note or bill is payable to the maker's own order, and indorsed by him in blank, 506.

where negotiable paper is transferred by delivery without indorsement, 506.

an indorsement may be made on the paper before the bill or note is drawn, 507.

how indorsement may be made when the payee is dead, 507.

if there be two firms, to both of which a person belongs, neither can sue the other, 507.

how the difficulty may be cured by indorsement, 507.

the rights and duties of the acceptor of a bill of exchange, 507.

when a written promise to accept a future bill, which describes that very bill, is equal to an acceptance, 507.

an acceptance after maturity is an acceptance to pay on demand, 508.

a bill can be accepted only by the drawee, or by some one who accepts for honor, 508.

acceptance or payment for honor, the meaning and effect of this, and how it is done, 508.

the reason why it is done, 509.

where a note includes in it a confession of judgment, 509.

the same note may waive the benefit of all exemption laws, 509.

the same note may include also a power of attorney, 509.

forms of such notes, 510-512.

NOTICE, in the law of negotiable paper, the law of, 500.

how the right to notice may be waived, and the effect of waiver, 503.

NOTICE BY CARRIER. (*See* CARRIAGE OF GOODS AND PASSENGERS.)

## O.

OHIO, boundaries, extent, constitution, history, and condition of, 131.

the right of suffrage by the constitution of, 195.

abstract of the statute laws of husband and wife, and of homestead, 229.

ORDINANCE, for the government of the United States north-west of the river Ohio, 133.

OREGON, boundaries, extent, constitution, history, and condition of, 152.

the law of suffrage by the constitution of, 195.

abstract of the statute law of husband and wife, and of homestead, 230.

ORIGINAL PROMISE, how it differs from a collateral promise, 463.

OTIS, James, advises the calling of an American congress, 10.

## P.

**PAINS AND PENALTIES**, bill of, similar to a bill of attainder, 182.

**PAPER MONEY**, its cost to us, 87.

(See **MONEY**.)

**PARTNERSHIP**, the law of, 532-537.

what a partnership is, 532.

how a partnership may be formed, 532.

partners may agree as to any way of dividing the losses, but the agreement will not affect parties dealing with the firm, 532.

agreements in articles of copartnership limiting the power of a partner are not binding on third parties who are ignorant of them, 533.

each partner is responsible to every creditor of the partnership for the whole amount of the debt, 533.

when persons who are not partners as between themselves are liable as partners to third parties, 533.

a secret partner, who he is, and law concerning, 533.

participation in the profits generally makes one a partner, 534.

a clerk or salesman may receive a share of the profits instead of wages, without being a partner, 534.

a partnership usually has but one business name, but may have more for distinct business transactions, 534.

how a partnership may be dissolved, 534.

if the articles do not provide that the parties should continue for a specified time, either partner may dissolve it when he will, but not so as to injure the other partners, 534.

the assignment by a partner of his whole interest in the partnership dissolves the partnership, 535.

the assignee acquires no right to become a member of the firm, 535.

death of any partner operates a dissolution, 535.

if the whole interest of the partner is sold on execution, this makes a dissolution, 535.

if one partner retires, this operates in law a dissolution, 535.

how the partner retiring should give notice thereof, 536.

of the property of the partnership, 536.

the law concerning real estate, held by a partnership, 536.

the authority of each partner and the joint liability of each partner, 537.

each partner is an agent of the whole partnership with full power as to transactions within the usual business of the firm, 537.

no person dealing with a partner is affected by his want of good faith toward the partnership, unless he colluded with the partner, 537.

a partner cannot bind the firm by transactions which do not belong properly to commercial business, 537.

how far a partner may bind his copartners by an instrument under seal, 538.



**PARTNERSHIP** — *Continued.*

- a partnership has no seal at law, 538.
- how far a majority of a firm can bind a minority, 538.
- where the name of one partner is used as the name of the firm, 538.
- one not a partner is not liable as such because the firm agrees to be bound by his advice, 538.
- the reception of a new partner constitutes a new firm, although the old name be retained, 539.
- how notices should be given to bind all the partners, 539.
- when money lent to a partner for partnership purposes constitutes a partnership debt, 539.
- when credit is given to one only of the partners, 539.
- the firm liable only to one who deals with the partner in good faith, 540.
- when one who deals with a partner knows that the partner is using the paper, property, or credit of the firm for his personal benefit, 540.
- how far a firm may be bound for the criminal acts of a partner, 540.
- remedies of partners against each other, 540.
- reasons why a partner has usually no remedy against a copartner in a court of law, but must go into a court of equity, 541.
- partners are entitled to perfect good faith from each other, and a court of equity will enforce it in all cases; instances given, 541.
- rights of a firm against third parties, 542.
- rights of creditors in respect to partnership or private funds, 542.
- creditors of a partnership have a right to the partnership funds; creditors of an individual partner have a right to his individual property; how these rights may be enforced, 543.
- how the interest of one partner in the partnership funds may be attached, levied upon, and sold, 543.
- dissolution of partnership, how caused, and effect of, 544.
- when a dissolution is caused by the death of a partner, the rights, duties, and powers of the survivors, 544.
- when a dissolution is caused by mutual consent, and provision made for the winding up of partnership affairs, 545.
- limited partnership, what it is, and how made, 545.
- general partners in a limited partnership, rights and responsibilities, 545.
- special partners in a limited partnership, rights and responsibilities, 545.
- advertisement of a limited partnership always made, 545.
- how such an advertisement should be drawn, and exact accuracy requisite in the publication, 546.
- forms of articles of copartnership, 546-550.

**PASSENGERS.** (*See* CARRIAGE OF GOODS AND PASSENGERS.)**PAYMENT AND TENDER,** 466.

- how payment may be made, 466.
- generally by payment of money, but may be by bill or note, or otherwise, as is agreed upon, 466.

**PAYMENT AND TENDER** — *Continued.*

- if an "approved note" is agreed upon, what this means, 466.
- where there is no special agreement the only payment known to the law is by cash, or in bills made a legal tender by law, 466.
- when a tender in current bank-bills is sufficient, 466.
- the effect of an informality in the tender, 466.
- if a larger sum than is due be tendered, there must be no requirement of change or of the balance, or of a receipt in full, 466.
- a simple receipt for so much money may be demanded, 467.
- a debtor who tenders money in payment of a debt, and afterwards refuses to pay the money, destroys the effect of his tender, 467.
- when a negotiable note or bill is given for a debt, effect of, 467.
- appropriation of payment, meaning of, and law of, 467.
- a debtor owing several debts to his creditor may appropriate his payment to any of his debts at his own pleasure, 467.
- if he does not appropriate his payment the receiver may, 468.
- if neither party appropriates the payment, how the law will do so, 468.

**PAYMENT FOR HONOR**, 508.

**PENNSYLVANIA**, convention of, adopted the constitution of the United States by a large majority, 23.

boundaries, extent, constitution, history, and condition of, 115.

the right of suffrage by the constitution of, 195.

abstract of the statute law of husband and wife, and of homestead, 230.

**PERSONAL RIGHTS** of a citizen of the United States, 171–247.

**PERSONAL SECURITY**, right to, by the constitution, 176.

**PILGRIMS**, their instrument of association adopted while in the "Mayflower," the first written constitution, 9.

**POWERS OF GOVERNMENT**, three: the executive, the legislative, and the judicial; progress in a well-ordered liberty depends upon their separation and independence, 47.

**PRESIDENT AND VICE-PRESIDENT**, method of electing, and history of, 43.

veto power, origin, purpose, and nature, 50.

**PRIMOGENITURE**, the right of, unknown in this country, 253.

**PRIVATEERING**, what it is, 79.

of late years, much effort to abolish, but hitherto ineffectual, 79.

**PRIZES**, of war, how regulated, 79.

**PROGRESS** of mankind in government, 7.

**PROPERTY RIGHTS**, of a citizen of the United States, 247–653.

**PROTEST OF NEGOTIABLE PAPER**, the law of, 500.

**PROXIES**, forms of, 530, 531.

**PUBLIC DEBT**, a comparison of our debt and interest with the debt and interest of Great Britain, 87.

## Q.

QUITCLAIM DEED, what it is, 279.

QUORUM, what it is, and how constituted, 659.

## R.

RAILROAD COMPANIES. (*See* CARRIAGE OF GOODS AND PASSENGERS.)

RAILROADS, power of Congress over, 59.

power of Congress to charter railroads, 59.

power to help railroads by bonds or grants, 59.

has Congress the power to build a railroad with the public funds, 59.

can Congress regulate the freights on, 60.

power to regulate commerce by, compared with power to regulate commerce by shipping, 61.

Congress cannot give a preference to the ports of one State over those of another by regulating railroads, 61.

did not enter into the contemplation of the framers of the constitution, and there must be a fair and rational interpretation of its provisions applicable to them, 62.

REAL ESTATE, held by a partnership, law of, 536.

RECEIPTS AND RELEASES, 468.

what a receipt is, 468.

every receipt is open to evidence, 470.

how releases differ from receipts, 470.

a release is a contract, and requires a consideration, unless it be sealed, 470.

a consideration for a release should be stated in it, 470.

forms of receipts and releases, 470-480.

RECORDING OF DEEDS, law of, and effect of, 278.

RECOVERY AND COLLECTION OF DEBTS, means provided for, 648, 649.

arrest and imprisonment, 648.

trustee process, 648.

exemption laws, 649.

REFEREES, same as arbitrators. (*See* ARBITRATION.)

RELEASES, how they differ from receipts, 470.

RELIGIOUS FAITH AND PROFESSION, freedom of, secured by the constitution, 187.

history of this freedom in the States, 188.

REPUBLICAN CONSTITUTIONAL GOVERNMENT, President Lincoln's definition, 6.

RETIRING PARTNER, what notice he should give, 536.

REPRESENTATION, right of, in the law of inheritance, and meaning of, 253.

REVOCATION, of authority, law concerning, 517.

of an award. (*See* ARBITRATION.)

**REVOCATION** — *Continued.*

of wills, how made by the testator, 258.

when made by operation of law, 258.

**RIGHT TO ASSEMBLE** and petition government, secured by the constitution, 183.

reasons for this provision, 183.

this provision implies that the petition should be respectfully treated, 184.

**RHODE ISLAND**, boundaries, extent, constitution, history, and condition of, 110.

the right of suffrage by the constitution of, 196.

abstract of the statute law of husband and wife, and of homestead, 231.

**RULES FOR ORGANIZATION AND PROCEDURE IN DELIBERATIVE ASSEMBLIES**, 657-676.

origin and purpose of the rules of order, 657.

organization of meetings or assemblies, 658.

quorum, what this means, and how it is constituted, 659.

how questions are decided, 659.

how business may be introduced, 660.

of the various kinds of motions, 661.

of resolutions and orders, and the difference between them, 661.

of the order in which motions may be put, 662.

of a motion to adjourn, when it is in order, 663.

of a motion that a matter before the meeting lie on the table, 663.

of a motion for the previous question, purpose and effect of, 663.

of a motion to postpone to a day certain, 664.

of a motion to commit, 665.

of a motion to amend, 665.

how committees are appointed, 667.

of the committee of the whole, 668.

privileged questions, 669.

of the call to order, how it is made, and the effect of, 669.

orders of the day, 670.

how the presiding officer puts motions, 670.

how a vote may be made certain, 671.

how a question may be taken by yeas and nays, 671.

how a motion should be made, 672.

sundry rules and usages of debate, 672.

of appeals from a presiding officer, how they are conducted, and effect of, 673.

of reconsideration, purpose and effect of, 673.

of a bill, what it is, and the stages through which it must pass to become a law, 674.

the preservation of order, that it is the purpose of all the rules of order, 675.

## S.

SEAL; what it is and how it may be made, 274.

SEAL ISLANDS OF ALASKA, 162.

SECRET PARTNER, who is, and law concerning, 533.

SIGNATURES OF DEEDS, how to be made, 274.

SILK GOODS, manufactures of, in the United States, 69.

SLANDER, the law of, 186.

SOUTH CAROLINA, responds to Massachusetts, and declares for union, 10.  
convention of, adopted the constitution of the United States by a large majority, 23.

boundaries, extent, constitution, history, and condition of, 123.

the right of suffrage by the constitution of, 196.

abstract of the statute law of husband and wife, and of homestead, 231.

STATE RIGHTS, reconciled with national sovereignty in the constitution, 44-47.

STATES, their unwillingness to give up the independence and sovereignty of each State, 12.

new, admission of, 94.

constitution of the several, 107-156.

STATUTE OF FRAUDS, 462-466.

when the English statute of frauds was passed, and for what purpose, 462.

statutes for the same purpose in our States, 462.

provisions respecting special promises by an executor or administrator, 462.

a promise to answer for the debt or default of another person, 463.

collateral promise, how it differs from an original promise, 463.

when the promise is intended to subserve some purpose of the promisor, 464.

when an old debt is extinguished by a new promise, 464.

an oral promise to pay the debt of another, and also to do some other thing, 464.

an agreement made upon consideration of marriage, 462.

a contract for sale of lands must be in writing, and signed, 462.

an agreement not to be performed within a year, 464.

legal meaning of this, is an agreement not capable of complete execution within a year, 465.

agreements which the statutes require to be in writing may be on several pieces of paper, if they relate to one and the same business, 465.

the signature may be at the beginning, middle, or end of the paper, 465.

a contract for the sale of goods, wares, and merchandise must be written and signed, 463.

shares in corporations or joint-stock companies are goods, wares, or merchandise, within the requirement of the statute, 465.

**STATUTE OF FRAUDS—Continued.**

the statute does not apply to contracts which have been partially executed, 465.

a representation or assurance concerning the character or credit of a party should in some States be written and signed, 466.

the sum beyond which contracts for sale should be written, 466.

**STATUTE OF LIMITATIONS, 625–630.**

construction of the statute, 626.

of prescription, or limitation, at common law, 626.

a new promise, form and effect of, 627.

part payment, effect of, 628.

of the statutory exceptions, 628.

when the period of limitation begins, 629.

the statute does not affect collateral security, 630.

**STOCK INSURANCE COMPANIES. (See INSURANCE AGAINST FIRE.)****SUBMISSION, to arbitrators or referees, same as reference. (See ARBITRATION.)**

“SUBSCRIBED,” how it differs from signed, 465.

**SUFFRAGE, the right and duty of, 189.**

citizenship does not of itself confer the right of suffrage, 189.

a citizen of the United States must be a citizen of that State or territory in which he resides, 190.

the right of suffrage depends on the law of the State where a man resides, 190.

the right of suffrage in the several States, 191–197.

the importance of a due exercise of this right, 197.

the dangers which threaten this country from a disregard of it, 197–200.

an oligarchy of corruption seems to be growing up, 198.

**SUICIDE, its effect upon a policy of life insurance, 600.****SURETY, how the surety and the guarantor differ, and wherein they are alike, 458.****T.**

**TABLE, giving the square miles, population in 1870, population in 1790, rank in population in 1780, rank in population in 1870, and the present number of representatives in Congress of each State, 167.**

**TABLES, annexed to the section on the census, 101–105.****TARIFF, what it is, 64.**

by what principles it should be governed, 66.

how far it should pay a special regard to protection of domestic manufactures, 68.

**TAXES, argument for and against protection by tariffs, 66–68.**

power of Congress to lay and collect, 64.

divisible into direct taxes and indirect taxes, 64.

how far regulated by a tariff, 64.

how far regulated by a license, 64.

**TAXES** — *Continued.*

- how far regulated by an excise, 64.
- the general established principles by which all taxation should be governed, 64.
- equality of taxation, 64.
- certainly of taxation, as to amount, time, and payment, 64.
- convenience of a tax to payers as to time and manner of payment, 64.
- provision as to three-fifths of all other persons referred to slaves; this a compromise of then existing views and claims, 64.
- the great question now is, should taxation be only for revenue, 65.
- second act passed by Congress was for the encouragement and protection of manufactures, 65.

**TENANCY BY THE CURTESY**, 210.

**TENDER**, what is a lawful tender, and how it should be made, 466.

**TENNESSEE**, boundaries, extent, constitution, history, and condition of, 130.

- the right of suffrage by the constitution of, 196.

- abstract of the statute law of husband and wife, and of home-  
stead, 232.

**TERRITORIES OF THE UNITED STATES**, in the order in which they were organized, 156-165.

**TERRITORY**, Indian. (*See* INDIAN TERRITORY.)

**TEXAS**, boundaries, extent, constitution, history, and condition of, 146.

- the right of suffrage by the constitution of, 196.

- abstract of the statute law of husband and wife, and of home-  
stead, 232.

**TRADE-MARKS**, law of, 645-647.

**TRIAL BY JURY**, secured by the constitution, 176.

- there are two kinds of jury, the grand jury and the petit jury, 177.

- how these juries are selected, 177.

- function of the grand jury, 177.

- function of the trial or petit jury, 177.

- venire*, writ of, what it is, 177.

- impanelled, how the petit jury is, 178.

- history of trial by jury, 178.

**TRIED TWICE** for the same offence, no one can be, by the constitution, 179.

- reason for this provision, 179.

## U.

**UNITED STATES**, government of, is the strongest government in the world, 4.

**USURY**. (*See* INTEREST AND USURY.)

**UTAH**, Territory of, boundaries, extent, history, and condition of, 157.

## V.

VICE-PRESIDENT, his powers and duties, 50.

VERMONT, boundaries, extent, constitution, history, and condition of, 126.

the right of suffrage by the constitution of, 196.

abstract of the statute law of husband and wife, and of home-  
stead, 233.

VIRGINIA, boundaries, extent, constitution, history, and condition of, 120.

the right of suffrage by the constitution of, 197.

abstract of the statute law of husband and wife, and of home-  
stead, 233.

## W.

WAR, articles of, 79.

what these articles prohibit, and rules respecting, 80.

WAR POWER, Congress has power to declare war in such form as it  
thinks proper, 78.

WARD, law of guardian and ward, 205-207.

WARRANTY, in insurance. (*See INSURANCE AGAINST FIRE.*)

WARRANTY DEED, what it is, 279.

WARS OF THIS COUNTRY, 81-83.

WASHINGTON, his proclamation in New Jersey in 1777, 11.

his reply to letters of John Jay, 18.

his letters to Colonel Humphries and General Knox, 20.

chosen president of the convention to form a constitution, 21.

his earliest service in 1754, 121.

WASHINGTON, Territory of, boundaries, extent, history, and condition of, 158.

city of, 164.

WESTERN TERRITORY, conflict of opinion and interest as to the  
ownership of the vacant lands in, 12.

WEST VIRGINIA, boundaries, extent, constitution, history, and con-  
dition of, 154.

the right of suffrage by the constitution of, 197.

abstract of the statute law of husband and wife, and of home-  
stead, 234.

WILLS, the law of, 255-265.

the disposal of property by, 255.

sometimes difficult to make an unobjectionable will, 255.

any person of sound mind and of proper age may make a will;  
minors of a certain age may bequeath personal property, 255.

a married woman cannot make a will, unless in relation to trust  
property, or when the statute law of her State gives her the  
power, 255.

directions how to make a will, 255.



**WILLS—***Continued.*

witnessing very material, and how a will should be witnessed, 256.

words of inheritance, what they are, and effect of, 257.

children not provided for in a will inherit, unless omission intentional, 257.

a testator should name his executors, but the will is good although he does not, 257.

codicils, what they are; and how they should be made, 257.

how a will should be revoked, 258.

revocation of a will by the operation of law, if the testator afterwards marry and have a child, 258.

forms of wills, 259–265.

**WISCONSIN**, boundaries, extent, constitution, history, and condition of, 150.

the right of suffrage by the constitution of, 197.

abstract of the statute law of husband and wife, and of homestead, 234.

**WINE**, manufacture of, in the United States, 70.

**WOOLLEN GOODS**, manufactures of, in the United States, 69.

**WORSTED GOODS**, manufactures of, in the United States, 69.

**WYOMING**, Territory of, boundaries, extent, history, and condition of, 161.

# INDEX OF FORMS.

---

## AGENCY.

- A power of attorney, 526.
- A power of substitution, 527.
- A power of attorney in a shorter form, 527.
- A full power of attorney to demand and recover debts, 528.
- A power of attorney to sell and deliver chattels, 529.
- A power of attorney given by seller to buyer, 529.
- A power of attorney to sell shares of stock, with appointment by attorney of a substitute, 529.
- A power of attorney to subscribe for stock, 530.
- A proxy, or power of attorney to vote, 530.
- A proxy, revoking all former proxies, 530.
- A proxy, with affidavit of ownership, in use in New York, 530.
- A power to receive a dividend, 531.

## AGREEMENTS.

- A general agreement, sufficient for many purposes, 429.
- A general agreement, as used in the Western States, 429.
- A general contract for mechanics' work, 431.
- An agreement for purchase and sale of land, in use in the Middle States, 431.
- An agreement for sale of land, in use in the Western States, 432.
- An agreement for warranty deed, in use in the Western States, 434.
- A contract to convey real estate, in use in the Middle States, 435.
- An agreement for the purchase of an estate, in use in New England, 436.
- An agreement for the sale of an estate by private contract, 439.
- An agreement to be signed by an auctioneer, after a sale by auction, 439.
- An agreement to be signed by the purchaser, after a sale by auction, 440.
- An agreement to make an assignment of a lease, 440.
- An agreement for making a quantity of manufactured articles, 440.
- An agreement between a trader and a book-keeper, 441.
- An agreement for damages in laying out or altering a road, 442.

**AGREEMENTS — Continued.**

An agreement between a person retiring from the active part of a business and another who is to conduct the same for their mutual benefit, 442.

A brief building contract, 444.

**APPRENTICESHIP.**

A general indenture of apprenticeship, 208.

The same in a shorter form, 209.

**ARBITRATION.**

Simple agreements to refer, 556.

Arbitration bond, one or more arbitrators, 556.

Award of arbitrators (or referees), 557.

**ASSIGNMENTS.**

A brief form of an assignment, to be indorsed on a note, or any similar promise or agreement, 445.

A general assignment, with a power of attorney, 446.

An assignment of a bond, 446.

An assignment of a bond, with a power of attorney, and a covenant, 447.

An assignment of a judgment, in the form of an indenture, 447.

An assignment of wages, with a power of attorney, 448.

**ATTORNEY. (See POWER OF ATTORNEY.)****BILL OF EXCHANGE. (See PROMISSORY NOTE.)****BILL OF LADING. (See RECEIPTS AND RELEASES.)****BILL OF SALE. (See PURCHASE AND SALE OF GOODS AND CHATTELS.)****BONDS.**

A simple bond, without condition, 450.

A bond for payment of money, with a condition to that effect, with a power of attorney to confess judgment annexed, 451.

A bond for conveyance of a parcel of land, 452.

A bond for a deed of land, with acknowledgment before a notary public, 453.

A bond in another form, for conveyance of land, with acknowledgment, 453.

A bond to a corporation for payment of money due for contribution to capital stock, with a power of attorney to confess judgment, 454.

(See also ASSIGNMENTS.)

**DEEDS CONVEYING OR CONCERNING REAL PROPERTY.**

A deed-poll of warranty, in common use in New England, 289.

Deed of gift by indenture, without any warranty whatever, 290.

Deed of bargain and sale without any warranty, 291.

Quitclaim deed without any warranty, 292.

Deed-poll of release and conveyance. Short form, 293.

Deed with special warranty against the grantor only, 293.

Quitclaim deed. Long form, with waiver of homestead, 295.

Deed with covenant against grantor, without release of homestead or dower, 296.

**DEEDS CONVEYING REAL PROPERTY — *Continued.***

- Separate relinquishment of homestead and dower in land sold under execution, 297.
- Full warranty deed, by indenture, without release of homestead or dower, 298.
- Warranty deed. Short form, with release of homestead and dower, 300.
- Warranty deed, with covenant against nuisances, without release of homestead or dower, 301.
- Bond for a deed, 303.
- Contract for sale of land, with penal obligation, 304.
- Power of attorney to sell lands, 305.
- Trust-deed for the benefit of a wife or some other person, 306.
- Trust-deed to secure payment of a note, without release of homestead or dower, 308.
- Trust-deed to secure a debt. Fuller form, with release of dower, 309.
- Trust-deed to secure a note. Shorter form, with warranty and release of homestead and dower, 312.
- Deed from trustees, 314.
- Deed of master in chancery, 315.
- Sheriff's deed on execution, in use in the Western States, 316.
- Sheriff's deed, in use in New England, 317.
- Sheriff's tax-deed, in use in the Western States, 319.
- Deed of executor, in use in the Eastern States, 320.
- Deed of executor, in use in the Middle States, 321.
- Deed of administrator of intestate, 323.
- Deed-poll of guardian of minor, 325.
- Deed of referee on foreclosure, in use in the Middle States, 326.
- Deed of collector of taxes, 328.
- Deed of assignee, in use in the Western States, 329.
- Acknowledgment of grantor and wife before commissioner for another State, 331.

**EXECUTORS AND ADMINISTRATORS.**

- Petition to be appointed executor without further notice, 268.
- Executor's bond, 269.
- Bond of executor, who is also residuary legatee, 270.
- Administrator's bond, 270.
- Administrator's petition for leave to sell a part of the real estate, 271.
- Bond of administrator licensed to sell real estate, 272.
- Account of executor, 273.

**GUARANTIES.**

- A guaranty to be indorsed on a note, 460.
- A guaranty of a note, on a separate paper, 460.
- A guaranty in another way, 460.
- A letter of guaranty, 461.
- A guaranty with collaterals, authorizing sales, 461.
- A guaranty with collaterals, promising additional security or authorizing sale, 461.

**HABEAS CORPUS**, a writ of, 175.

**HUSBAND AND WIFE.**

An indenture to put in trust the property of an unmarried woman, 237.

Another form of indenture for the same purpose, 242.

**INFANTS.**

Adult's confirmation of his promise as a minor, 205.

**INSURANCE AGAINST FIRE.**

Notice to the insurance company of a loss by fire, 594.

A similar notice, with a sworn statement and certificate, 595.

Assignment of a policy to be indorsed thereon, 596.

Assignment of a policy by a separate instrument, 596.

**LEASES OF HOUSES AND LANDS OR REAL ESTATE.**

A short form of a lease, 383.

A fuller form, with a provision for abatement of rents, 384.

A short form of lease, in use in the Western States, 386.

A lease of city property, in use in Chicago, 386.

A lease, with provisions for taxes and assessment, 389.

A lease, with covenants about water-rate and injury by fire; in use in New York, 390.

A lease by grant, in use in the Western States, 392.

A lease by certificate, with surety, 393.

A lease of city property, in use in St. Louis, 394.

What is called a country lease, in use in the Western States, 395.

A ground lease, 397.

An assignment of lease, and ground-rent, 400.

A lease containing chattel mortgage covenants, to secure the rent, 402.

A building lease, 405.

A mining lease, 406.

A lease of land, supposed to contain oil, salt, or other minerals, 407.

An assignment of a lease, 408.

Landlord's notice to quit for non-payment of rent. Short form, 409.

Landlord's notice to quit for non-payment of rent. Another form, 409.

Landlord's notice to pay rent due, or quit, 410.

Landlord's notice to leave at the end of the term, 410.

Landlord's notice to determine a tenancy at will, 410.

A receipt for rent, in use in New York, 411.

**LIMITED PARTNERSHIP.** (*See* PARTNERSHIP.)

**MECHANIC'S LIEN.**

A notice of a claim, to be filed with the clerk of the county, 651.

A bill of particulars of a mechanic's claim, 652.

A release and discharge of a mechanic's lien, 652.

The same in a more specific form, 653.

**MORTGAGES OF GOODS AND CHATTELS, OR PERSONAL PROPERTY.**

A mortgage of personal property, 374.

A mortgage of personal property, with warranty, 375.

A mortgage of personal property, with a power of sale, 376.

Another form of a deed for the same purpose, 377.

**MORTGAGES OF LAND.**

- Promissory note, to be secured by mortgage, 331.
- Bonds to be secured by a mortgage, 332.
- Mortgage without power of sale and without warranty, but with release of homestead and dower, 332.
- Mortgage with power of sale, to secure a bond without release of dower, 334.
- Mortgage to secure a debt, with power of sale. Short form, 335.
- Mortgage to secure a debt. Fuller form, with power of sale, 336.
- Deed-poll of mortgage, with power to sell and insurance clause, and release of dower and homestead, 338.
- Mortgage by indenture, with power of sale and interest and insurance clause, to secure a bond, 340.
- Mortgage to executors, with power of sale, 342.
- Mortgage of a lease, 344.
- Mortgagee's deed under a power of sale, 345.
- Assignment of mortgage. Short form, 347.
- Assignment of mortgage, with power of attorney, 348.
- Assignment of mortgage by a corporation, 349.
- Discharge of mortgage. Short form, 350.
- Release and quitclaim of mortgage, as used in the Western States, 350.
- Discharge of mortgage, as used in the Middle States, 351.
- Discharge and satisfaction of a mortgage by a corporation, 352.
- Release of a part of the mortgaged premises, 352.
- Deed extending a mortgage, 353.

**NATURALIZATION.**

- Preliminary declaration of intention, 90.
- Certificate of the clerk to the declaration, 91.
- Application for admission as a citizen, 91.
- Deposition and oath of witnesses, 92.
- Oath of petitioner, 92.
- Certificate of clerk to the oath, 93.
- Certificate of clerk for record, 93.

**NOTE OF HAND. (See PROMISSORY NOTE.)****PARTNERSHIP.**

- Articles of copartnership between two tradesmen, 546.
- Shorter form of articles of copartnership, 549.
- Certificate of a limited partnership, with acknowledgments and oath, 550.

**POWER OF ATTORNEY. (See AGENCY, BONDS, ASSIGNMENTS, and MORTGAGES OF LAND.)****PROMISSORY NOTE, OR NOTE OF HAND.**

- A common form, 482.
- A common form of a bill of exchange, 482.
- A note given for a chattel sold, with a condition preserving the ownership of the seller, 485.
- A judgment note, with waiver of exemption and other rights, 509.
- A judgment note, with waiver and a power of attorney, 510.
- A judgment note, with fuller waiver, and a power of attorney, 511.

**PROXY.** (*See AGENCY.*)**PURCHASE AND SALE OF GOODS AND CHATTELS.**

Bill of sale of goods and chattels, 367.

Bill of sale of personal property, with a condition to make it a mortgage, with power of sale, 368.

**RECEIPTS AND RELEASES.**

A receipt in simplest form, 469.

A receipt, stating on what account the money is received, 470.

A receipt, stating the purpose for which the money or articles are received, 470.

A general release, 470.

A mutual general release, by indenture, 471.

A release from creditors to a debtor, under a composition, 471.

A release of all legacies, 472.

A release of a bond, it being lost, 472.

A release of a judgment, 473.

A release of a condition, 474.

A release of a covenant contained in an indenture of lease, 474.

A release in extinguishment of a power, 475.

A release from a lessor to a lessee (upon his surrendering his lease), from the covenants therein, 475.

A general release of dower, 476.

A release of dower to the heir, 477.

A release of dower, in consideration of an annuity given by will, 477.

A release of dower, where the present husband of the widow joins in the deed, 478.

A release of a trust, 478.

A release of right to lands, 479.

A release between two traders, on settling accounts, 480.

A receipt, in the nature of a bill of lading, of a steam-packet company, 573.

Same, of an express company, 574.

**REFERENCE, REFEREES, AND AWARD.** (*See ARBITRATION.*)**WILLS:**

Form of a will, 259.

Form of a codicil, 259.

Form of a will with many trusts, 260.

Form of a will with other trusts and provisions, 262.









